

Second, the applicant submits that the conditions attached to the grant of the exemption are not capable of preventing harm to competition, or enforceable.

Further, the applicant alleges infringement of Article 82 EC, of its fundamental rights (namely the freedom of enterprise and of ownership) and of the principle of Community loyalty.

<sup>(1)</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57).

**Action brought on 14 August 2009 — Audi and Volkswagen v OHIM (TDI)**

**(Case T-318/09)**

(2009/C 267/121)

*Language in which the application was lodged: German*

**Parties**

*Applicants:* Audi AG (Ingolstadt, Germany) and Volkswagen AG (Wolfsburg, Germany) (represented by P. Kather, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**Form of order sought**

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 14 May 2009 (Case R 226/2007-1);

— Order the Office for Harmonisation in the Internal Market to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'TDI' for goods in Class 12 (application No 3179058)

*Decision of the Examiner:* Registration refused

*Decision of the Board of Appeal:* Appeal dismissed

Pleas in law:

— Infringement of Article 7(3) of Regulation (EC) No 207/2009 <sup>(1)</sup> as the mark applied for has the requisite acquired distinctiveness;

— Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 as the mark applied for has the requisite distinctive character;

— Infringement of the first clause of Article 76(1) of Regulation No 207/2009 as the defendant failed to take up the applicants' offers of evidence;

— Infringement of Article 75 of Regulation No 207/2009.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 14 August 2009 — Planet v Commission**

**(Case T-320/09)**

(2009/C 267/122)

*Language of the case: Greek*

**Parties**

*Applicant:* Planet AE, a public limited consultancy company (represented by: V. Christianos, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— annul the two Commission (OLAF) decisions requesting the applicant's registration initially in category W1a and subsequently in category W1b of the early warning system (EWS);

— order the Commission to pay the applicant's costs.

**Pleas in law and main arguments**

The present action seeks the annulment, first, of the Commission decision requesting the applicant's registration in category W1a of the early warning system ('the EWS') and, second, of the Commission decision requesting the amendment of that first decision in order to register the applicant from 25 May 2009 in the more unfavourable category W1b of the EWS.

The applicant submits that the contested measures are vitiated by infringement of essential procedural requirements, on account of a failure to comply with the conditions laid down by Decision 2008/969/EC <sup>(1)</sup> that relate to the procedural rules which must be followed in order for registrations entered in the EWS to be consistent with Community law. In particular, the applicant observes that, under Article 8(1) of that decision, the competent Commission organ responsible for signing a contract is obliged to inform in advance the natural or legal person in respect of whom registration of a warning in the EWS has been requested that data concerning him may be registered. Moreover, under Article 3(1)(c) of the decision, the registration must be accompanied by due reasoning.