

As the basis of its action, the applicant claims that the defendant incorrectly applied Article 87(1) EC in a number of respects. In that regard, it is submitted, *inter alia*, that the defendant wrongly categorises conservation organisations as undertakings and wrongly failed to carry out the necessary overall assessment of the measures referred to. Furthermore, the conservation organisations have obtained no material advantage for State aid purposes from the measures referred to. The applicant further complains of an incorrect application of the fourth criterion laid down by the Court of Justice in Case C-280/00 *Altmark Trans und Regierungspräsidium Magdeburg* [2003] ECR I-7747.

In the alternative, a breach of the duty to state reasons laid down in Article 253 EC is claimed.

Action brought on 3 September 2009 — PAGO International v OHIM — Tirol Milch (Pago)

(Case T-349/09)

(2009/C 267/136)

Language in which the application was lodged: German

Parties

Applicant: PAGO International GmbH (Klagenfurt, Austria) (represented by: C. Hauer and C. Schumacher, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Tirol Milch reg.Gen.mbH Innsbruck (Innsbruck, Austria)

Form of order sought

— Amend the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 July 2009 concerning cancellation proceedings No 2025 C (Community trade mark No 915 488) so as to dismiss the appeal by Tirol Milch registrierte Genossenschaft mit beschränkter Haftung against the decision of the Cancellation Division of 4 August 2008, and order Tirol Milch registrierte Genossenschaft mit beschränkter Haftung to pay the costs of the appeal proceedings;

— in the alternative, annul the decision of the Fourth Board of Appeal and refer the case back to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) for a fresh decision.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The coloured figurative mark 'Pago' for goods in Class 32 (Community trade mark No 915 488)

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity: Tirol Milch registrierte Genossenschaft mit beschränkter Haftung

Decision of the Cancellation Division: Revocation in part of the Community trade mark

Decision of the Board of Appeal: Annulment in part of the decision of the Cancellation Division and revocation of the Community trade mark

Pleas in law:

— Infringement of Article 51 in conjunction with Article 15(1)(a) of Regulation (EC) No 207/2009, ⁽¹⁾ inasmuch as it was incorrectly deemed not to have been proved that the trade mark at issue in the proceedings had been used in such a way as to preserve the rights of the proprietor;

— Infringement of Article 75 of Regulation No 207/2009 and of fundamental Community rights, in particular the right to a fair hearing.

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

Action brought on 4 September 2009 — ICO Satellite v Commission

(Case T-350/09)

(2009/C 267/137)

Language of the case: English

Parties

Applicant: ICO Satellite Ltd (Slough, United Kingdom) (represented by: S. Tupper, Solicitor)

Defendant: Commission of the European Communities