

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

Form of order sought

- annul the decision of the Second Board of Appeal of 11 November 2009 in Case R 635/2009-2 inasmuch as it dismissed the trade mark application No 7 077 654 for the goods and services which are the subject of this action;
- grant Community trade mark application 'EURO AUTOMATIC PAYMENT' No 7 077 654 for all goods and services refused in Classes 9 and 36;
- order OHIM to pay the applicant's costs incurred in the proceedings before OHIM and in the present action, pursuant to Article 87 of the Rules of Procedure.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'EURO AUTOMATIC PAYMENT' for goods and services in Classes 9, 35, 36, 37, 38, 42 and 45 (Application for registration No 7 077 654).

Decision of the Examiner: Partial refusal of the registration.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 because, for all the goods and services refused for registration, the mark applied for is not descriptive but distinctive.

Action brought on 28 January 2010 — Netherlands v Commission

(Case T-29/10)

(2010/C 80/63)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: C. Wissels and Y. de Vries, Agents)

Defendant: European Commission

Form of order sought

- annul in part the Commission Decision of 18 November 2009 in Case No C 10/2009 (ex. N 138/2009) — Netherlands/aid for ING Groep N.V.;
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In the contested Decision, the Commission found that certain measures taken by the Netherlands State in regard to ING Groep N.V. constitute State aid within the meaning of Article 107(1) TFEU, and it declared that aid to be compatible with the common market, subject to certain commitments. According to the Decision, the modification of the repayment terms in respect of EUR 5 billion of the capital injection represents additional aid.

The application is directed against the first paragraph of Article 2 of the Decision, which is based on, inter alia, the Commission's finding that the modification of the repayment terms in respect of EUR 5 billion of the capital injection involves State aid.

First, the applicant submits that the Decision is contrary to Article 107 TFEU in so far as the Commission found in the Decision that the modification of the repayment terms concerning the holding in the core capital of ING constituted EUR 2 billion of additional State aid in favour of ING. In the applicant's view, the Commission erred, for the following reasons, in classifying the modification of the repayment terms as State aid:

- In so far as there is any question of State aid, this consists, according to the Decision, in the full shareholding in the core capital of ING; a modification of the terms under which that aid can be repaid cannot, in addition to that shareholding, constitute State aid.
- The modification of the repayment terms ought to have been included by the Commission in its appraisal of the shareholding in the core capital, and should not have been appraised separately.

- In the event that the Commission was in fact entitled to appraise the modification of the repayment terms itself in the light of the rules on State aid, it committed a number of errors in that regard.

— In its appraisal, the Commission wrongly failed to take account of the fact that one of the purposes of the modification of the repayment terms was to bring those terms further into line with market-compliant repayment terms.

Second, the applicant submits that the Decision is at variance with the principle of the duty of care in that the Commission failed to collect the necessary information concerning the relevant facts.

Third, the applicant takes the view that the Decision infringes the principle that reasons must be given, inasmuch as the Commission failed to adduce conclusive reasons for its view that the modification of the repayment terms constituted additional aid.

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Action brought on 29 January 2010 — Reagens v Commission

(Case T-30/10)

(2010/C 80/64)

Language of the case: English

Parties

Applicant: Reagens SpA (San Giorgio di Piano, Italy) (represented by: B. O'Connor, L. Toffoletti, D. Gullo and E. De Giorgi, lawyers)

Defendant: European Commission

Form of order sought

- Annul Commission's decision of 11 November 2009 No C(2009) 8682 final (Case COMP/38.589 — Heat Stabilisers) in relation to Tin Stabilisers in totality or insofar as it concerns the applicant;
- find that the time-limits provided for in Article 25 of Regulation No 1/2003 apply so as to preclude the imposition of a fine on the applicant;
- in the alternative, to find that the Commission has erred in the fixing of a fine of EUR 10 791 000 on the applicant and if necessary to adjust that fine to a level that is appropriate with the limited nature of the applicant's possible infringement of Article 101 TFEU after 1996;

— open a measure of enquiry into the application of paragraph 35 of the Guidelines on fines in relation to Chemson and Baerlocher and in relation to all submissions by addressees of the Tin Stabilisers decision after the notification of the Statement of Objections;

— order the Commission to pay the costs of this application.

Pleas in law and main arguments

By means of its application, the applicant seeks partial annulment of Commission's decision of 11 November 2009 No C(2009)8682 final insofar as it held the applicant liable for an infringement of Articles 81 EC and 53 EEA (Case COMP/38.589 — Heat Stabilisers), and that it imposes a fine to it.

In support of its submissions, the applicant puts forward the following pleas in law:

The applicant claims, first, that the Commission made a manifest error in the assessment of the facts in relation to Tin stabilisers, insofar that is found that the applicant participated in an infringement of Article 81 EC (now Article 101 TFEU) after the 1996/1997 period.

Secondly, the applicant submits that the Commission made a manifest error in the application of Article 25 of Regulation (EC) No 1/2003 ⁽¹⁾ to the facts of the Tin stabiliser market and in particular, in finding that the time-limits provided in that Article were met. According to the applicant, the failure to prove an infringement post 1996/1997 means that a decision to fine the applicant is time barred by virtue of the five year or the ten year rules provided for in that Article.

Third, the applicant contends that the Commission breached the principles of sound administration and the applicant's legitimate expectations that it would conduct an investigation to the best of its ability in a rigorous and diligent manner and that it would not ignore evidence of competition. The applicant, moreover, claims that the Commission acted in breach of its rights of defence in that it did not adequately examine the evidence provided by the applicant in response to the statement of objections and in the hearing of the parties nor did it allow the applicant re-access to the non-confidential file for the investigation.