

in the further alternative, order the applicant to pay the costs of the invalidity proceedings only to the extent that that the trade mark “L112” (EU 002349728) was declared invalid for the goods “Pharmaceutical preparations; food supplements for medicinal purposes” (30 %);

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the Community word mark No 2 349 728 for goods in Classes 5 and 29

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Lehning Enterprise SARL

Trade mark right of applicant for the declaration: the French word mark “L.114” (trade mark No 1 312 700), although the application concerned only certain goods in Class 5

Decision of the Cancellation Division: application for a declaration of invalidity upheld and the Community trade mark concerned declared partially invalid

Decision of the Board of Appeal: applicant's appeal partially upheld

Pleas in law:

- No proof of use of the French trade mark “L.114” by the applicant for a declaration of invalidity;
- No similarity of goods in Class 5;
- Error of law by the Board of Appeal in assessing the similarity of the signs

Action brought on 19 February 2010 — Lehning Entreprise v OHIM — Certmedica International (L112)

(Case T-78/10)

(2010/C 113/86)

Language in which the application was lodged: French

Parties

Applicant: Lehning Entreprise (Sainte-Barbe, France) (represented by: P. Demoly, lawyer)

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

Other party to the proceedings before the Board of Appeal: Certmedica International GmbH (Aschaffenburg, Germany)

Form of order sought

- In view of the similarity between the signs and the goods at issue, there is a likelihood of confusion between the marks L.114 and L112 at issue in respect of all the goods in Class 5 covered by their registrations. Consequently, the applicant claims that the Court should annul the contested decision in so far as it dismissed the application of Lehning Entreprise for a declaration of invalidity in respect of the following goods: ‘Sanitary preparations’ and ‘Dietetic foodstuffs concentrates with a shellfish base (including chitosan)’, and should uphold the remainder of the decision.
- Lastly, and having regard to the circumstances of the case, it would be particularly inequitable for the applicant to bear the non-recoverable costs which it has had to incur in these proceedings that are manifestly unjustified. It therefore claims that the Court should order Certmedica International GmbH to pay it the costs incurred in the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: word mark ‘L112’ for goods in Classes 5 and 29 (Community trade mark No 2 349 728)

Proprietor of the Community trade mark: Certmedica International GmbH

Applicant for the declaration of invalidity: Lehning Entreprise

Trade mark right of applicant for the declaration: the national mark 'L.114' registered in France for goods in Class 5 (No 1 312 700)

Decision of the Cancellation Division: application granted for a declaration of invalidity of the trade mark concerned for the goods in Class 5 in part

Decision of the Board of Appeal: appeal of Certmedica International upheld in part

Pleas in law: Infringement of Articles 8, 52 and 53 of Council Regulation (EC) No 207/2009 on the Community trade mark, since there is a likelihood of confusion between the marks at issue in relation to the goods 'Sanitary preparations' and 'Dietetic foodstuffs concentrates with a shellfish base (including chitosan)'

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Action brought on 22 February 2010 — COLT Télécommunications France SAS v European Commission

(Case T-79/10)

(2010/C 113/87)

Language of the case: French

Parties

Applicant: COLT Télécommunications France SAS (Paris, France) (represented by: M. Deboux, lawyer)

Defendant: European Commission

Form of order sought

— Pursuant to the measures of organisation of procedure and measures of inquiry under Article 49, 64 and 65 of the Rules of Procedure of the Court, order the Commission to make available certain documents, referred to in Commission Decision C(2009) 7426 Final (State aid N 331/2008 — France);

— Annul the decision in so far as it found that the 'measure notified does not constitute aid within the meaning of Article 87(1) EC';

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision C(2009) 7426 Final of 30 September 2009 declaring that the compensation for the costs of providing a public service in the amount of EUR 59 million, granted by the French authorities to a group of undertakings for the establishment and operation of a very-high-speed broadband electronic communications network (project THD 92) in the Hauts-de-Seine department does not constitute State aid.

In support of its action, the applicant puts forward a single plea based on the failure by the Commission to open the formal investigation procedure provided for in Article 108(2) of the Treaty on the Functioning of the European Union (TFEU). That plea is broken down into seven parts.

— The first part of the plea is based on the finding that the particularly long period of time spent on investigating the case (15 months) is in itself an indicator of the complexity of the issues and the need to open a formal investigation procedure.

— In the second part of the plea, the applicant states that the two-phase schedule for rolling out the network should have led the Commission to find at least that the first phase of rolling-out of the network, concentrated in very dense and profitable areas, did not require any public subsidies.

— The third part of the plea aims to establish that the methodological approach taken in the decision to define alleged 'non-profitable areas' is very questionable and contradicts the findings of the ARCEP (the French sectoral regulator); those contradictions and methodological errors should have led to the opening of an in-depth investigative phase.