

- (c) Error in assessing the facts, by finding that the promotional tax, as a mechanism to fund promotional and advertising initiatives in other Member States and third countries, discriminates against imported products and infringes Article 110 of the EC Treaty, and infringement of the principle of good administration, by not carrying out additional investigation measures after the request for information of 24 April 2006 in order to respond to the doubts that the Commission still had in this regard;
- (d) Error of law, regarding the application of Article 108 of the EC Treaty and Article 7(4) of Council Regulation (EC) No 659/1999, <sup>(2)</sup> and having regard to the principles of proportionality and of equal treatment, in so far as — even if one accepts the legality of the analysis carried out by the Commission in the Decision (which is not the case) — the seventh condition laid down in Article 3(2) of the Decision contradicts the analysis and the conclusions that the Commission presented in the grounds of the Decision;
- e) Error of law, in so far as the ninth condition laid down in Article 3(2) of the Decision infringes Articles 108 and 296 of the EC Treaty, Articles 6(1) and 7(4) of Council Regulation (EC) No 659/1999 <sup>(87)</sup>, and also the principles of proportionality, of equal treatment and of the rights of defence.

<sup>(1)</sup> Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors.

<sup>(2)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

**Action brought on 8 October 2010 — The Pukka Luggage Company v OHIM — Jesus Miguel Azpiroz Arruti (PUKKA)**

(Case T-483/10)

(2010/C 328/78)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* The Pukka Luggage Company Ltd (London, United Kingdom) (represented by: K. E. Gilbert and M. H. Blair, Solicitors)

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

*Other party to the proceedings before the Board of Appeal:* Jesús Miguel Azpiroz Arruti (San Sebastián, Spain)

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 July 2010 in case R 1175/2008-4;

- In the alternative, annul the contested decision in respect of its finding that the opposition should succeed against 'luggage';
- Or in the alternative, annul the contested decision in respect of its finding that the opposition should succeed against 'hard suitcases, hard trolley cases';
- Order the defendant and the other party to the proceedings before the Board of Appeal to bear their costs of the proceedings as well as those incurred by the applicant.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'PUKKA', for goods in class 18 — Community trade mark application No 4061545

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited:* Spanish trade mark registration No 1570450 of the figurative mark 'PUKAS', for goods in class 18; Community trade mark registration No 19802 of the figurative mark 'PUKAS', for goods and services in classes 25, 28 and 39

*Decision of the Opposition Division:* Upheld the opposition partially

*Decision of the Board of Appeal:* Rejected the appeal

*Pleas in law:* The applicant considers that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in its assessment of the similarity of the goods and in its assessment of the similarity of the contested trade mark in relation to the earlier trade mark.

**Action brought on 14 October 2010 — Gas Natural Fenosa SDG v Commission**

(Case T-484/10)

(2010/C 328/79)

*Language of the case: Spanish*

**Parties**

*Applicant:* Gas Natural Fenosa SDG, SA (Madrid, Spain) (represented by: F. González Díaz and F. Salerno, lawyers)

*Defendant:* European Commission