

**Action brought on 21 September 2011 — ‘Rauscher’  
Consumer Products v OHIM (Representation of a tampon)**

(Case T-492/11)

(2011/C 355/36)

*Language of the case: German*

**Parties**

*Applicant:* ‘Rauscher’ Consumer Products GmbH (Vienna, Austria) (represented by M. Stütz, lawyer)

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

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 July 2011 in Case R 2168/2010-1;
- Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* figurative mark, representing a tampon, for goods in Classes 3 and 5

*Decision of the Examiner:* rejection of the application

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

*Pleas in law:* Infringement of Article 7(1)(b) of Regulation No 207/2009 as the Community trade mark concerned has distinctive character

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**Action brought on 23 September 2011 — Germany v  
Commission**

(Case T-500/11)

(2011/C 355/37)

*Language of the case: German*

**Parties**

*Applicant:* Federal Republic of Germany (represented by: T. Henze and K. Petersen, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul Commission Decision C(2011) 4922 final of 13 July 2011 in State aid procedure N 438/2010 in so far as it declares that the entire subordinated loans scheme is covered by Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid;

— in the alternative, annul the whole decision;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

The action is directed against the Commission’s decision on the subordinated loans scheme WACHSTUM for undertakings with a rating in Sachsen-Anhalt in so far as it declares that the entire subordinated loans scheme is covered by Regulation (EC) No 1998/2006 <sup>(1)</sup> on *de minimis* aid.

The action challenges the Commission’s view that it is to be assumed, on the basis of the mere fact that the loans are granted by a special credit institution, that they are not granted under market conditions and that therefore the requirements of the *de minimis* Regulation must be complied with.

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of Article 107 TFEU in conjunction with Articles 1 and 2 of Regulation No 1998/2006 on account of the incorrect finding or mere claim that there is an advantage

The Commission’s finding that the measure is covered by the *de minimis* Regulation is substantively incorrect. The addressees of the loans scheme received no advantage for the purposes of Article 107(1) TFEU with the result that the loans scheme should not therefore be regarded as aid in the main cases to which it applies.

— The Commission should not have concluded that an advantage exists from the mere fact that loans are granted by a special credit institution. What matters especially as regards loans are the loan conditions. In order to determine whether an advantage is being granted the interest rate required, the collateral for the loan and the overall position of the undertaking receiving the loan are decisive. It must be ascertained whether a private investor would have granted a comparable loan at the agreed interest rate and on the basis of the securities indicated.

— In accordance with the previous decision-making practice of the Commission, those indicators were, in the case of subordinated loans, concretised by means of the so-called Brandenburg method on the basis of the Commission reference rate communication in such a way that there was no aid within the meaning of Article 107(1) TFEU. The Commission is suddenly departing from that decision-making practice and solely taking into account the characteristics of the credit institution which is granting the loan. Those characteristics are, however, completely unsuitable as indicators since special credit institutions are also capable of acting under market conditions.