

- declare that the contested decision is non-existent or, alternatively, void, in particular Article 1(1) thereof in so far as it declares that certain producers which have filmed at CDL have received incompatible aid;
- consequently, annul the orders for recovery ordered by Article 2 of the contested decision;
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

In support of their action, the applicants rely on three pleas in law.

1. Error of law in concluding that there was State aid in favour of CDL (misapplication of the private investor principle). Infringement of Articles 107(1) TFEU and 345 TFEU

The applicants submit that the Commission incorrectly analyses the private investor principle and is mistaken in its conclusion concerning the existence of State aid. The Generalitat Valenciana's investments in CDL occurred on two separate occasions — in 2000 and 2004 — and both investment decisions were adopted after the respective business plans, which established that the project was expected to be profitable, had been produced. In applying the private investor principle in this case, the Commission compares that project with the profitability of projects and operators which are not comparable due to their size, thereby emptying that principle of its content in breach of Articles 107(1) and 345 TFEU.

Similarly, the Commission refuses to take into account in its legal and economic analysis the existence, in addition to the film studio project, of the project to develop a commercial, leisure and hotel area on neighbouring land of the Sociedad Proyectos Temáticos de la Comunidad Valenciana ('SPTCV'). If both projects are taken into account, the profitability of the investment in CDL is even greater.

2. Error of law in the analysis of the compatibility of the CDL project and failure to state reasons

The applicants submit that the Commission refuses to take into consideration that because CDL is located in Alicante, the project was eligible for regional aid. Since that project is a large investment project, the Spanish authorities take the view that CDL was entitled to apply for regional aid with an intensity of approximately 36 %, which has not been contested by the Commission. Notwithstanding this, the Commission refuses to concede that when the private investor principle is applied to 64 % of the investment, the project is even more profitable.

In the alternative, the applicants submit that the investment by the Valencian authorities in the CDL film studio complex should be declared compatible, either in whole or in part, in accordance with Article 107(3)(d) TFEU.

The Commission does not give reasons for its conclusions that the aid for the construction of the CDL film studios is not necessary, proportionate and adequate, and, in its view, such aid cannot benefit — even in part — from the cultural compatibility exemption.

3. Error of law due to the absence of a decision and, in any event, a total absence of reasoning in relation to the incentives to film productions

In addition to finding that the investment in CDL constitutes incompatible aid, the Commission categorises any incentive awarded to film producers on condition that filming takes place at CDL as incompatible.

The contested decision devotes only a single paragraph to such alleged aid in which it simply declares that the latter is incompatible. The decision fails to (i) detail the measure at issue referred to, (ii) mention the information supplied to that effect by the Member State, (iii) examine whether or not the elements of aid are present, (iv) analyse the compatibility criteria, and (v) consider whether legitimate expectations arise.

The applicants submit, therefore, that the contested decision is non-existent or void on the ground of the failure to state reasons. In addition, since those incentives satisfied the conditions laid down in the 2001 Commission communication on aid to cinema, they ought to have been found compatible with Article 107(3)(d) TFEU.

Action brought on 16 July 2012 — Simca Europe v OHIM — PSA Peugeot Citroën (Simca)

(Case T-327/12)

(2012/C 287/62)

Language in which the application was lodged: German

Parties

Applicant: Simca Europe Ltd (Birmingham, United Kingdom) (represented by: N. Haberkamm, lawyer)

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

Other party to the proceedings before the Board of Appeal: PSA Peugeot Citroën GIE (Paris, France)

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 12 April 2012 in Case R 645/2011-1;
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs, including the costs for the applicant's counsel.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'Simca' for goods in Class 12 — Community trade mark No 6 489 371

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: PSA Peugeot Citroën GIE

Grounds for the application for a declaration of invalidity: the applicant was acting in bad faith at the time when it filed the application

Decision of the Cancellation Division: the application for a declaration of invalidity was rejected

Decision of the Board of Appeal: the appeal was upheld and the mark was declared invalid

Pleas in law: Infringement of Article 52 of Regulation (EC) No 207/2009

Action brought on 24 July 2012 — Mundipharma v OHIM — AFP Pharmaceuticals (Maxigesic)

(Case T-328/12)

(2012/C 287/63)

Language in which the application was lodged: German

Parties

Applicant: Mundipharma GmbH (Limburg an der Lahn, Germany) (represented by: F. Nielsen, lawyer)

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

Other party to the proceedings before the Board of Appeal: AFP Pharmaceuticals Ltd (Takapuna, New Zealand)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 May 2012 in Case R 1788/2010-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: AFP Pharmaceuticals Ltd

Community trade mark concerned: the word mark 'Maxigesic' for goods in Class 5 — Community trade mark application No 7 056 104

Proprietor of the mark or sign cited in the opposition proceedings: the applicant

Mark or sign cited in opposition: the word mark 'OXYGESIC' for goods in Class 5

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was upheld and the opposition was rejected

Pleas in law: infringement of Article 8(1)(b) of Regulation (EC) No 207/2009

Action brought on 27 July 2012 — Sartorius Weighing Technology v OHIM (Representation of a yellow curve)

(Case T-331/12)

(2012/C 287/64)

Language of the case: German

Parties

Applicant: Sartorius Weighing Technology GmbH (Göttingen, Germany) (represented by K. Welkerling, 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 3 May 2012 in Case R 1783/2011-1;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs, including the costs incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: other mark, which represents a yellow curve at the bottom edge of an electronic display unit, for goods in Classes 7, 9, 10 and 11

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 207/2009