

2. Second plea in law, alleging that the Commission committed manifest errors of assessment in relation to assessing the advantage granted under the ATT, by finding that Ryanair and Aer Arann were in the same position as regards the economic and competitive advantage granted by the ATT, disregarding entirely the ATT's particular competitive effects as between Ryanair and Aer Lingus, erring in its assessment of the alleged advantage gained by Ryanair vis-à-vis other, non-Irish, carriers and ignoring the damage inflicted on Ryanair through the ATT's advantageous effects for Ryanair's competitors.
3. Third plea in law, alleging that the Commission committed manifest errors of assessment in relation to the recovery decision, by depriving Ireland of the required discretion to assess the extent to which the State aid distorted competition and thus restore the previous situation, by failing to analyse the relevance of the affected airlines' ability to pass on the ATT to their customers and by disregarding the competitive distortions that will arise as a result of the recovery decision's combination with the alleged 'beneficiary' airlines' right to restitution under EU and Irish law.
4. Fourth plea in law, alleging that the Commission failed to give Ryanair notice of its recovery decision as required by Article 6 of Council Regulation (EC) No. 659/1999⁽¹⁾ and Article 41 of the Charter of Fundamental Rights of the EU.
5. Fifth plea in law, alleging that the Commission is in breach of its obligation to state reasons, by failing to justify why, in departure from well-established case-law, the EUR 10 rate could be both unlawful under EU law and at the same time the 'normal' and 'legitimate' benchmark, and by failing to analyse the economic and competitive effects of the measure in question.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 19 November 2012 — Farmaceutisk Laboratorium Ferring v OHIM — Tillotts Pharma (OCTASA)

(Case T-501/12)

(2013/C 26/121)

Language in which the application was lodged: English

Parties

Applicant: Farmaceutisk Laboratorium Ferring A/S (Copenhagen, Denmark) (represented by: I. Fowler, Solicitor, A. Renck and J. Fuhrmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Tillotts Pharma AG (Ziefen, Switzerland)

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 6 September 2012 in case R 1214/2011-4; and.
- Order that the costs of the proceedings be borne by the Defendant, or — in the event that the other party to the proceedings before the Board of Appeal intervenes on the side of the Defendant — that they be borne jointly by the Defendant and the Intervener.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark 'OCTASA', for goods in class 5 — Community trade mark application No 8169881

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

Mark or sign cited in opposition: Austrian trade mark registration No 102370 for the word mark 'PENTASA', for among others goods in class 5; Hungarian trade mark registration No 136836 for the word mark 'PENTASA', for goods in class 5; Italian trade mark registration No 40977 C/81 for the word mark 'PENTASA', for among others goods in class 5; Polish trade mark registration No 71634 for the word mark 'PENTASA', for goods in class 5; Slovak trade mark registration No 175482 for the word mark 'PENTASA', for goods in class 5; Swedish trade mark registration No 173377 for the word mark 'PENTASA', for among others goods in class 5; French trade mark registration No 1699236 for the word mark 'PENTASA', for among others goods in class 5; Irish trade mark registration No 107207 for the word mark 'PENTASA', for goods in class 5; Czech trade mark registration No 182567 for the word mark 'PENTASA', for goods in class 5

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) and 8(5) of Council Regulation No 207/2009.