

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of Article 107(3)(c) TFEU

By their first plea in law, the applicants submit that the Commission wrongly found the aid at issue to be compatible with the internal market, since the requirements of Article 107(3)(c) TFEU were not satisfied. They submit that the aid does not serve a purpose in the common interest. In that respect, they also argue, *inter alia*, that this can be determined only in the case of a proven market deficiency, which is lacking in this instance. Moreover, they argue that there is no compatibility for the purposes of Article 106(2) TFEU. Furthermore, the applicants claim that the aid is not appropriate to address the alleged market efficiency problem. The aid also provides no incentive. The Commission merely assumes that the aid has an incentive effect. The aid is also not appropriate. The Commission merely assumes that the national authorities would ensure that the individual aid payments were proportionate, and it bases its misassumption on the status of the association of being in the common interest. The applicants accuse the Commission of having failed to balance the various interests correctly, in that it failed to weigh up the positive and negative effects of the aid. In that respect, they claim that, in the case of doubt, operating aid (and the aid granted is primarily operating aid) is not compatible with the internal market.

2. Second plea in law: failure to initiate the formal investigation procedure

In the context of their second plea, the applicants submit that, in spite of serious difficulties in assessing the compatibility of the aid with the internal market, the Commission failed to initiate the formal investigation procedure. An indicator of such serious difficulties is the length of the preliminary investigation procedure — over one year in this instance. Similarly, the Commission failed to sufficiently establish the facts necessary for its assessment. In the view of the applicants, only in the formal investigation procedure could a sufficiently in-depth investigation of the climbing centre market have been carried out. Furthermore, the complaint examined by the Commission gave rise to difficult legal issues regarding operating aid for associations in the common interest. The applicants further submit that, as competitor undertakings or associations of undertakings they are interested parties within the meaning of Article 1(h) of Regulation (EC) No 659/1999, and they have the right to submit their opinion in the formal investigation procedure in accordance with Article 108(2) TFEU, a right of which they were deprived as a result of the failure to initiate the procedure.

Action brought on 15 March 2013 — Sun Capital Partners/OHIM — Sun Capital Partners (SUN CAPITAL)

(Case T-164/13)

(2013/C 147/47)

Language in which the application was lodged: English

Parties

Applicant: Sun Capital Partners, Inc. (New York, United States) (represented by: P.-A. Dubois, Solicitor, D. Alexander, QC and F. Clark, Barrister)

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

Other party to the proceedings before the Board of Appeal: Sun Capital Partners Ltd (London, United Kingdom)

Form of order sought

The applicant claims that the Court should:

- Annul the contested decision of the Board; and/or
- Remit the matter for further consideration by the Board;
- Order the defendant to pay the costs of the proceedings, including the costs incurred by the applicant before the Board;
- Order SCPL to pay the costs of the proceedings, including the costs incurred by the applicant before the Board, in the event that SCLP becomes an intervening party in these proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'SUN CAPITAL'—Community trade mark registration No 2 942 654

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The grounds of the request for a declaration of invalidity were those laid down in Articles 53(1)(c) and 8(4) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the contested Community trade mark invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1) in conjunction with 8(4) of Council Regulation No 207/2009.

Action brought on 21 March 2013 — Benelli Q.J./OHIM — Demharter (MOTO B)

(Case T-169/13)

(2013/C 147/48)

Language in which the application was lodged: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demharter GmbH (Dillingen, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the defendant's decision and remit the case to OHIM for further examination and a new decision due to the fact that the prior marks of the applicant shall be considered earlier trade marks within the meaning of Article 8(1)(b) Council Regulation No 207/2009 and therefore the applicant's opposition based on likelihood of confusion shall be assessed as to its substance;

— Order the defendant to pay the applicant's costs.

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 figurative mark 'MOTO B' claiming the colours black, white, red, gold, green, brown and grey for goods in classes 9, 12 and 25 — Community trade mark application No 8 780 926

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

Mark or sign cited in opposition: Well-known, Italian, non-registered figurative marks «MOTOBI» et al.

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 21 March 2013 — Benelli Q.J./OHIM — Demharter (MOTOBI)

(Case T-170/13)

(2013/C 147/49)

Language in which the application was lodged: English

Parties

Applicant: Benelli Q.J. Srl (Pesaro, Italy) (represented by: P. Lukácsi, lawyer)

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

Other party to the proceedings before the Board of Appeal: Demharter GmbH (Dillingen, Germany)

Form of order sought

The applicant claims that the Court should:

— Alter the defendant's decision and order the dismissal of the application for revocation filed by the cancellation applicant;

— Annul the defendant's decision and remit the case to OHIM for further examination and a new decision should the Court consider that it is inevitable to conduct another thorough analysis of the evidence of genuine use;

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'MOTOBI' for goods in class 12 — Community trade mark registration No 835 264

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Revoked the Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation No 207/2009.