

The applicant further submits that Article 8 (4) of the Merger Control regulation, which constitutes the legal basis of the present Decision, is only applicable where a concentration has been implemented. The applicant states, however, that the concentration in this case has not been implemented in any way.

Thirdly, the applicant argues that the modalities for the divestiture constitute an infringement of Community law. According to the applicant, these modalities are disproportionate and exceed the Commission's competences under Article 8(4) of the Merger Control Regulation.

The applicant finally claims that the Commission has failed to respect the applicant's procedural rights, in that the Commission did not respect the applicant's right to be heard and relied on information not provided to the applicant.

(¹) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ L 395 of 30.12.1989 p. 1; text republished in OJ L 257 of 21.9.1990, p. 13).

Action brought on 20 March 2002 by Check Point Software Limited against the Office for Harmonisation in the Internal Market

(Case T-89/02)

(2002/C 156/55)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 20 March 2002 by Check Point Software Limited, represented by Mr Graham Farrington of Farrington & Co Solicitors, Reading (United Kingdom).

The applicant claims that the Court should:

- annul the Decision of the defendant's First Board of Appeal of 7 January 2002; and
- order the defendant to remit the application to its Examination Division for re-examination of Community Trade Mark no. 1744168 (SECURECLIENT).

Pleas in law and main arguments

The Community Trade Mark concerned: SECURECLIENT

Product or service: 'Computer software to protect systems from unauthorised access', in International Class 9.

Challenged Decision before the Board of Appeal: Refusal of registration by the Examiner.

Grounds submitted: Infringement of Article 7(1)(b) and (c) of Regulation No 40/94.

Action brought on 28 March 2002 by Klausner Nordic Timber GmbH & Co. KG against the Commission of the European Communities

(Case T-91/02)

(2002/C 156/56)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 March 2002 by Klausner Nordic Timber GmbH & Co. KG, Wismar (Germany), represented by D.O. Reich, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the Commission's decision of 15 January 2002 on State aid granted by Germany to Klausner Nordic Timber GmbH & Co. KG;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant manages, as general partner, the business of the company Klausner Nordic Timber GmbH which was founded in 1997 and built a sawmill in Wismar in 1998. By the contested decision, the Commission declared the State aid which the Federal Republic of Germany granted to the applicant in relation to the construction and expansion of the sawmill to be incompatible with the common market.

The applicant claims, first, that the guarantee in excess of EUR 15,21 million with an aid component of 0,5 % must be regarded as 'de minimis' aid, thus precluding a Commission decision ordering the recovery of that aid. The Commission therefore wrongly applied Article 87 EC by failing to comply with Commission Regulation (EC) No 69/2001⁽¹⁾ and/or the notice on the de minimis rule for State aid.

The applicant further submits that the Commission misapplied Articles 87 and 88 EC and the German Investment Allowance Law. The Investment Allowance Law of 1999 provides for the grant of a tax investment allowance for the acquisition and manufacture of capital equipment and buildings by businesses located in the former East Germany and was approved in its entirety by the Commission. The requirements of the Law are fulfilled, so that the investment allowance in favour of the applicant was lawful. The Commission's decision that the grant of an investment allowance to the applicant was permissible only as to 10 % is therefore unlawful.

Moreover, the applicant claims that the decision constitutes an infringement of the prohibition *venire contra factum proprium* and the Community principle of the protection of legitimate expectations. Furthermore, the Commission unlawfully failed to consider the actual aid intensity amount and infringed Council Regulation (EC) No 659/1999 and Article 253 EC⁽²⁾. Finally, the Commission infringed Articles 87, 88 and 253 EC by way of its formulaic and inaccurate consideration of the company Klausner Nordic Timber as a large-scale company.

⁽¹⁾ Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (OJ 2001 L 10, p. 30).

⁽²⁾ 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 27 March 2002 by Hugo Boss AG against the Office for Harmonisation in the Internal Market

(Case T-94/02)

(2002/C 156/57)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 27 March 2002 by Hugo Boss AG, represented by Mr Emmanuel Baud of Latham & Watkins, Paris (France). A further party to the proceedings before the Board of Appeal was Delta Protipos Biomichania Galaktos S.A.

The applicant claims that the Court should:

- annul the contested Decision rendered by the Fourth Board of Appeal in its ruling no. R0053/2001-4 on 12 December 2001;
- order that the BOSS Community Trade Mark application nr 331462 for ice cream be rejected;
- order the OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Delta Protipos Biomichania Galaktos S.A.

The Community trade mark concerned: The word mark 'BOSS' for certain goods in classes 29, 30, 31, 32 and 33

Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings: Hugo Boss AG

Trade mark or sign asserted by way of opposition in the opposition proceedings: The German registration of the word mark 'BOSS' for certain goods in classes 3, 9, 14, 18, 24 and 25 and the following international registration of this mark as well as the international registration of the word mark 'BOSS' for certain goods in classes 29, 30, 31, 32 and 33 and the international registration for these same goods of the word mark 'BOSS HUGO BOSS'.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal introduced by Hugo Boss AG.