

Sixth, the applicants submit that the Commission has committed a breach of procedure since it failed to apply the provisions of Regulation No 659/1999 ⁽³⁾ on existing aid to the capital contributions which it deemed to be aid.

Seventh, the 2005 guidelines also circumvent the division of powers between the Member States and the Commission, since the Commission is extending its powers beyond the framework laid down in the EC Treaty by adopting an expanded interpretation of the essential criterion of 'undertaking' in Article 87 (1) EC and, as a result of this expanded interpretation, making procedures which are within the administrative competence of national authorities subject to review by the Community institutions.

⁽¹⁾ Communication from the Commission — Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports, OJ 2005 C 312, p. 1.

⁽²⁾ Communication from the Commission — Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ 1994 C 350, p. 7.

⁽³⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Action brought on 2 October 2008 — S.L.V. Elektronik v OHIM — Jiménez Muñoz (LINE)

(Case T-449/08)

(2008/C 327/64)

Language in which the application was lodged: German

Parties

Applicant: S.L.V. Elektronik GmbH (Übach-Palenberg, Germany) (represented by: C. König, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Angel Jiménez Muñoz (Gelida, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 18 July 2008 in Case R 759/2007-4 in so far as registration of the trade mark applied for (003316908) is refused in respect of 'mains-operated lights, lighting apparatus and installations, stage effects lighting apparatus; electric lamps; individual parts for the aforesaid goods'; and order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings before the Court of First Instance.

Pleas in law and main arguments

Applicant for a Community trade mark: S.L.V. Elektronik GmbH

Community trade mark concerned: Figurative mark 'LINE' for goods in class 11 — registration No 3 316 908

Proprietor of the mark or sign cited in the opposition proceedings: Angel Jiménez Muñoz

Mark or sign cited in opposition: National figurative and word marks 'Line' for goods and services in classes 9, 35, 37 and 38

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Annulment in part of the decision of the Opposition Division

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94, as there is no likelihood of confusion between the marks in opposition. Furthermore, the Board of Appeal did not proceed on the basis of the trade mark applied for but on the basis of a design that was not identical.

Action brought on 6 October 2008 — Mitteldeutsche Flughafen and Flughafen Leipzig/Halle v Commission

(Case T-455/08)

(2008/C 327/65)

Language of the case: German

Parties

Applicants: Mitteldeutsche Flughafen AG (Leipzig, Germany), Flughafen Leipzig/Halle GmbH (Leipzig, Germany) (represented by: M. Núñez-Müller, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 1 of the Commission's decision of 23 July 2008 (C(2008) 3512 final) pursuant to the first paragraph of Article 231 EC in so far as the Commission finds that

(a) the measure adopted by Germany in respect of capital contributions for the construction of a new southern runway and related airport infrastructure at Leipzig/Halle airport constitutes State aid for the purposes of Article 87(1) EC; and

(b) this 'State aid' amounts to EUR 350 million;

— order the Commission to pay the costs of the proceedings, including the applicants' costs, pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance.