

regulation, initially set for 31 March 2004, was subsequently postponed for one year, thus allowing Community shipyards until 31 March 2005 (the new expiry date of the regulation) to conclude further contracts for building certain types of cargo vessel. In support of those contracts, the regulation provides for aid of up to 6 % of the contract value. The applicant is party to five contracts for the construction of chemical vessels.

In order to finance all of the contracts during the period from 2002 to 2005, Italy notified two financing packages of EUR 10 million each. The Commission authorised the first by decision of 19 May 2004 but refused, by the contested decision, to authorise the second financing package. The Commission maintains that the additional financing constitutes 'new aid' within the meaning of Article 4 of Commission Regulation (EC) No 794/2004 of 21 April 2004 (OJ 2004 L 140, p. 1) in that it represents more than 20 % of the original budget of the scheme. The Commission further argues that the additional financing is incompatible with the common market in that the notification was made after 31 March 2005, the date on which Regulation No 1177/2002 expired.

The applicant submits that it was not possible for the Italian Government to prepare the financing for the contracts by 31 March 2005, since it was not in a position to have knowledge of all the contracts concerned: that being the last day of application of the regulation, the undertakings had the right to conclude contracts up to and on that day.

The applicant accordingly puts forward the following pleas in law in support of its action to contest the decision, in particular:

- infringement of Regulation No 1177/2002 in the light of the specific aims of the legislature in relation to Article 87(3)(e) EC;
- infringement of Article 4(2)(a) of Commission Regulation No 794/2004 in so far as the additional financing of EUR 10 million has been categorised as 'new aid';
- irrelevance of the recommendation of 20 June 2005 of the WTO Dispute Settlement Body in respect of the shipbuilding contracts lawfully concluded under Regulation No 1177/2002;
- failure to state reasons to substantiate the allegation that there is no legal basis for authorising the additional financing;
- breach of the principles of good administration, the right to a fair hearing, the rights of the defence, equal treatment, subsidiarity and proportionality.

**Action brought on 24 December 2008 — Kerma v OHIM (BIOPIETRA)**

**(Case T-586/08)**

(2009/C 55/80)

*Language in which the application was lodged: Italian*

**Parties**

*Applicant:* Kerma SpA (Puegnago sul Garda, Italy) (represented by A. Manzoni, lawyer)

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

**Form of order sought**

- declare that the trade mark BIOPIETRO conforms with Article 4 of the Trade Mark Regulation and is not devoid of any distinctive character within the meaning of Article 7(1)(b) of that regulation;
- order OHIM to pay the costs in the event of its being unsuccessful.

**Pleas in law and main arguments**

*Community trade mark concerned:* Word mark 'BIOPIETRA' (application for registration No 5.658.893), for goods in Class 19.

*Decision of the Examiner:* Rejection of the application for registration.

*Decision of the Board of Appeal:* Rejection of the appeal.

*Pleas in law:* Infringement and incorrect application of Article 7(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

**Action brought on 2 January 2009 — Italy v Commission**

**(Case T-3/09)**

(2009/C 55/81)

*Language of the case: Italian*

**Parties**

*Applicant:* Italian Republic (represented by: P. Gentili, avvocato dello Stato)

*Defendant:* Commission of the European Communities