

Other party to the proceedings before the Board of Appeal of OHIM: Gelkaps GmbH (Pritzwalk, Germany)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 19 November 2008 (Case RE 87/2008-2), relating to opposition proceedings between La Cachuera, SA and Gelkaps GmbH

**Operative part of the order**

The Court:

1. Dismisses the action.
2. Orders La Cachuera, SA to bear its own costs.

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<sup>(1)</sup> OJ C 69, 21.3.2009.

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**Order of the President of the Court of First Instance of 24 April 2009 — Nycomed Danmark v EMEA**

(Case T-52/09 R)

**(Application for interim measures — Marketing authorisation for a medicinal product — Ultrasound echocardiographic imaging agent for diagnostic purposes (perflubutane) — Refusal by the EMEA to grant a waiver from the obligation to submit a paediatric investigation plan — Application for suspension of operation of a measure and interim measures — No urgency)**

(2009/C 141/91)

Language of the case: English

**Parties**

*Applicant:* Nycomed Danmark ApS (Roskilde, Denmark) (represented by: C. Schoonderbeek and H. Speyart van Woerden, lawyers)

*Defendant:* European Medicines Agency (EMA) (represented by: V. Salvatore and N. Rampal Olmedo, Agents)

**Re:**

APPLICATION, first, for suspension of the operation of the EMA's decision of 28 November 2008 rejecting the application for a product-specific waiver concerning perflubutane and, secondly, for the grant of interim measures.

**Operative part of the order**

1. The application for interim measures is dismissed.
  2. Costs are reserved.
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**Order of the President of the Court of First Instance of 3 April 2009 — UCAPT v Commission**

(Case T-96/09 R)

**(Interim measures — Application for suspension of operation of a measure — Failure to comply with the formal requirements — Inadmissible)**

(2009/C 141/92)

Language of the case: French

**Parties**

*Applicant:* Union des Coopératives agricoles des producteurs de tabac de France (UCAPT) (Paris, France) (represented by: B. Peignot and D. Garreau, lawyers)

*Defendant:* Commission of the European Communities (represented by: M. Moore and P. Mahnič Bruni, acting as Agents)

**Re:**

Application for suspension of operation of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

**Operative part of the order**

1. The application for interim measures is dismissed.
  2. Costs are reserved.
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**Action brought on 24 March 2009 — Viasat Broadcasting UK v Commission**

(Case T-114/09)

(2009/C 141/93)

Language of the case: English

**Parties**

*Applicant:* Viasat Broadcasting UK Ltd (London, United Kingdom) (represented by: S. Kalsmose-Hjelmborg and M. Honoré, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— annul the decision of the European Commission of 4 August 2008 in Case N 287/2008; and

— order the Commission to pay the costs.

### Pleas in law and main arguments

By this application, the applicant seeks the annulment of the Commission's decision of 4 August 2008 in Case N 287/2008<sup>(1)</sup> by which the Commission approved, on the basis of Article 87 (3) (c) EC rescue aid granted by the Danish State to TV 2 Danmark A/S ('TV 2').

The applicant submits that the aid does not comply with Article 87(3) (c) since it infringes the principle of proportionality enshrined in that provision according to which such aid must not 'adversely affect trading conditions to an extent contrary to the common interest'. In particular, the applicant claims first that the Commission erred in law when it held that TV 2 constituted a 'firm in difficulty' within the meaning of the Community guidelines on state aid for rescuing and restructuring firms in difficulty<sup>(2)</sup>. Secondly, the applicant contends that the Commission erred in law when holding that the rescue aid was limited to what was necessary to keep TV 2 business and that aid was maintained at a level which would not allow TV 2 to invest in new activities or to behave aggressively in commercial markets. Thirdly, the applicant claims that the Commission erred in law when it failed to take into account the State aid received by TV 2 in the past.

<sup>(1)</sup> A summary of the contested decision was published in the *Official Journal of the European Union* (OJ 2009 C 9, p. 2) and a non-confidential version of the decision was made available on [http://ec.europa.eu/community\\_law/state\\_aids/](http://ec.europa.eu/community_law/state_aids/)

<sup>(2)</sup> Community guidelines on state aid for rescuing and restructuring firms in difficulty (OJ 2004 C 244, p. 2)

### Action brought on 20 March 2009 — La Sonrisa de Carmen and Bloom Clothes v OHIM — Heldmann (BLOOMCLOTHES)

(Case T-118/09)

(2009/C 141/94)

*Language in which the application was lodged: Spanish*

#### Parties

*Applicants:* La Sonrisa de Carmen SL (Vigo, Spain), Bloom Clothes SL (Madrid, Spain) (represented by: S. Mígel Pereira, 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:* Harald Heldmann (Hamburg, Germany)

#### Form of order sought

— Annul the decision of the Board of Appeal of 8 January 2009 in Case R 695/2008-2 and order the registration of the mixed mark BLOOMCLOTHES as a Community trade mark in classes 25 and 35.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* La Sonrisa de Carmen SL

*Community trade mark concerned:* Mixed mark consisting of the term 'BLOOMCLOTHES' with the figurative element of a toadstool (Application No 5 077 128) for goods and services in classes 18, 25 and 35.

*Proprietor of the mark or sign cited in the opposition proceedings:* Harald Heldmann.

*Mark or sign cited in opposition:* Word mark 'BLOOM' (German trade mark No 30 439 990) for goods in class 25.

*Decision of the Opposition Division:* Partial rejection of the opposition.

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

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark (OJ 1994 L 11, p. 1), as replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

### Action brought on 23 March 2009 — Zhejiang Xinshiji Foods et Hubei Xinshiji Foods v Council

(Case T-122/09)

(2009/C 141/95)

*Language of the case: English*

#### Parties

*Applicants:* Zhejiang Xinshiji Foods Co. Ltd, Hubei Xinshiji Foods Co. Ltd (represented by: F. Carlin, Barrister, A. MacGregor, Solicitor, N. Niejahr and Q. Azau, lawyers)

*Defendant:* Council of the European Union

#### Form of order sought

— annul the Regulation to the extent that it imposes anti-dumping duties on products produced and exported by the applicants;

— order the Council of the European Union to pay its own costs and the applicants' costs in connection with these proceedings.

#### Pleas in law and main arguments

By means of their application, the applicants seek the annulment, pursuant to Article 230 EC, of Council Regulation (EC) No 1355/2008 of 18 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China<sup>(1)</sup> (the Definitive Regulation), insofar as it concerns the applicants.

The applicants submit that the Definitive Regulation should be annulled insofar as it concerns them because it violates the applicants' rights of defence, the duty to state reasons and breaches the principle of sound administration.