

Defendant: European Commission

Form of order sought

— annul the contested decision,

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2009) 4541 final of 17 June 2009 declaring compatible with the common market the aid for the research and development costs involved in the design and manufacture of an aircraft product granted by the United Kingdom authorities to Bombardier (Short Brothers) [N 654/2008] ⁽¹⁾. The Commission's decision was taken following a preliminary examination under Article 108(3) TFEU. The applicants are the competitors to the beneficiary of the aid and they lodged a complaint opposing the proposed aid and asking the Commission to open a formal investigation procedure.

In support of its application for annulment, the applicants submit the following pleas in law:

First, they claim that the Commission experienced serious difficulties during its preliminary examination of the compatibility of the State aid with the common market and, therefore, was obligated to initiate the formal investigation procedure provided for in Article 108(2) TFEU. They further state that the Commission's failure to initiate the formal procedure denied applicants and other parties concerned of their right to be consulted during the Commission's assessment. In the applicants' opinion this constitutes a procedural defect in violation of the Treaty.

Specifically, the serious difficulties encountered by the Commission are evidenced by:

— the length and circumstances of the preliminary examination;

— the failure of the Commission to identify the market for wings of aircraft with 100-149 seats as a relevant product market;

— the failure of the Commission to analyse the impact of the State aid on competition in the market for wings of aircraft with 100-149 seats;

— the Commission's analysis of the impact of the State aid on competition for finished aircraft with 100-149 seats, which was insufficient and incomplete.

Second, the applicants contend that the Commission's identification of a purported market for aerostructures and failure to identify the relevant market for wings of aircraft with 100-149 seats constitutes a manifest error of assessment of the aid's compatibility with the common market carried out under Article 107(3)(c).

Third, they argue that the Commission's failure to analyse the impact of the State aid on the relevant market for wings of aircraft with 100-149 seats constitutes a manifest error of assessment of the aid's compatibility with the common market carried out under Article 107(3)(c).

Fourth, they submit that the Commission's incomplete and flawed analysis of the impact of the State aid on the market for finished aircraft with 100-149 seats constitutes a manifest error of assessment of the aid's compatibility with the common market carried out under Article 107(3)(c).

⁽¹⁾ OJ 2009 C 298, p. 2

Action brought on 18 February 2010 — Certmedica International GmbH v OHIM — Lehning Enterprise (L112)

(Case T-77/10)

(2010/C 113/85)

Language in which the application was lodged: German

Parties

Applicant: Certmedica International GmbH (Aschaffenburg, Germany) (represented by: P. Pfortner, 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: Lehning Enterprise SARL (Sainte Barbe, France)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 9 December 2009 (Case R 934/2009-2), notified on 21 December 2009, inasmuch as it declares invalid the Community trade mark “L112” (EU 002349728) in relation to the goods “*Pharmaceutical and veterinary preparations; medicinal products for internal use; food supplements for medical purposes*” in Class 5;

— in the alternative, annul the decision of the Second Board of Appeal of OHIM of 9 December 2009 (Case R 934/2009-2), notified on 21 December 2009, inasmuch as it declares invalid the Community trade mark “L112” (EU 002349728) in relation to the goods “*Medicinal products for internal use; food supplements for medical purposes*” in Class 5;

— in the further alternative, annul the decision of the Second Board of Appeal of OHIM of 9 December 2009 (Case R 934/2009-2), notified on 21 December 2009, inasmuch as it declares invalid the Community trade mark “L112” (EU 002349728) in relation to the goods “*Medicinal products for internal use*” in Class 5;

— reject in full the application, based on the French trade mark “L.114” (F 1 312 700), for a declaration of invalidity of Community trade mark “L112” (EU 002349728) and permit registration of Community trade mark “L112” for the following goods:

“Class 5: Pharmaceutical, veterinary and sanitary preparations; medicinal products for internal use; food supplements for medical purposes; dietetic foodstuffs concentrates with a shellfish base (including chitosan)

Class 29: Foodstuff concentrates with a shellfish base (including chitosan);

in the alternative reject the application, based on the French trade mark “L.114” (F 1 312 700), for a declaration of invalidity of Community trade mark “L112” (EU 002349728) inasmuch as it seeks a declaration of invalidity of the trade mark “L112” in Class 5 for the goods “*Medicinal products for internal use; food supplements for medical purposes*” and permit registration of Community trade mark “L112” for the following goods:

“Class 5: Sanitary preparations; medicinal products for internal use; food supplements for medical purposes; dietetic foodstuffs concentrates with a shellfish base (including chitosan)

Class 29: Foodstuff concentrates with a shellfish base (including chitosan);

in the further alternative, reject the application, based on the French trade mark “L.114” (F 1 312 700), for a declaration of invalidity of Community trade mark “L112” (EU 002349728) inasmuch as it seeks a declaration of invalidity of the trade mark “L112” in Class 5 for the goods “*Medicinal products for internal use*” and permit registration of Community trade mark “L112” for the following goods:

“Class 5: Sanitary preparations; medicinal products for internal use; dietetic foodstuffs concentrates with a shellfish base (including chitosan)

Class 29: Foodstuff concentrates with a shellfish base (including chitosan);

— Order Lehning Enterprise SARL to pay all costs arising for the applicant out of the invalidity proceedings and the proceedings before the Board of Appeal;

in the alternative, order the applicant to pay the costs of the invalidity proceedings only to the extent that that the trade mark “L112” (EU 002349728) was declared invalid for the goods “*Pharmaceutical preparations*” (20 %);

in the further alternative, order the applicant to pay the costs of the invalidity proceedings only to the extent that that the trade mark “L112” (EU 002349728) was declared invalid for the goods “Pharmaceutical preparations; food supplements for medicinal purposes” (30 %);

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the Community word mark No 2 349 728 for goods in Classes 5 and 29

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Lehning Enterprise SARL

Trade mark right of applicant for the declaration: the French word mark “L.114” (trade mark No 1 312 700), although the application concerned only certain goods in Class 5

Decision of the Cancellation Division: application for a declaration of invalidity upheld and the Community trade mark concerned declared partially invalid

Decision of the Board of Appeal: applicant's appeal partially upheld

Pleas in law:

- No proof of use of the French trade mark “L.114” by the applicant for a declaration of invalidity;
- No similarity of goods in Class 5;
- Error of law by the Board of Appeal in assessing the similarity of the signs

Action brought on 19 February 2010 — Lehning Entreprise v OHIM — Certmedica International (L112)

(Case T-78/10)

(2010/C 113/86)

Language in which the application was lodged: French

Parties

Applicant: Lehning Entreprise (Sainte-Barbe, France) (represented by: P. Demoly, lawyer)

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

Other party to the proceedings before the Board of Appeal: Certmedica International GmbH (Aschaffenburg, Germany)

Form of order sought

- In view of the similarity between the signs and the goods at issue, there is a likelihood of confusion between the marks L.114 and L112 at issue in respect of all the goods in Class 5 covered by their registrations. Consequently, the applicant claims that the Court should annul the contested decision in so far as it dismissed the application of Lehning Entreprise for a declaration of invalidity in respect of the following goods: ‘Sanitary preparations’ and ‘Dietetic foodstuffs concentrates with a shellfish base (including chitosan)’, and should uphold the remainder of the decision.
- Lastly, and having regard to the circumstances of the case, it would be particularly inequitable for the applicant to bear the non-recoverable costs which it has had to incur in these proceedings that are manifestly unjustified. It therefore claims that the Court should order Certmedica International GmbH to pay it the costs incurred in the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: word mark ‘L112’ for goods in Classes 5 and 29 (Community trade mark No 2 349 728)

Proprietor of the Community trade mark: Certmedica International GmbH