

Action brought on 6 April 2010 — Confederación de Cooperativas Agrarias de España and CEPES v Commission

(Case T-156/10)

(2010/C 148/75)

Language of the case: Spanish

Parties

Applicants: Confederación de Cooperativas Agrarias de España (Madrid, Spain), Confederación Empresarial Española de la Economía Social (CEPES) (Madrid, Spain) (represented by: M. Araujo Boyd and M. Muñoz de Juan, lawyers)

Defendant: European Commission

Form of order sought

- Accept as admissible and uphold the pleas in support of annulment submitted in this action;
- annul Article 1 of the contested decision;
- alternatively, annul Article 4 of the contested decision, and
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

This action is brought against the Commission Decision of 15.12.2009 (State aid No C 22/2001) relating to measures to support agriculture implemented by Spain following the fuel price increase. That decision declares that certain measures to support agriculture included in Royal Decree Law 10/2000 of 6 October on emergency support for agriculture, fisheries and transport,⁽¹⁾ notified by Spain on 29 September 2000, constituted aid incompatible with the common market and orders recovery.

The measures in question were the subject of an initial Commission Decision of 11 November 2001 ('the initial decision') which declared that 'the measures to support agricultural cooperatives provided for by Royal Decree Law 10/2000 (...) do not constitute aid within the meaning of Article 87(1) EC'. That initial decision was annulled by a judgment of 12 December 2006,⁽²⁾ on the ground of an inadequate statement of reasons, since the Commission did not in its decision take sufficient account the effect which other taxes,

apart from those affecting companies, might have had on the tax arrangements applying to cooperatives. Thereafter, without adopting a fresh decision to initiate the procedure, the Commission adopted on 15 December 2009 the contested decision.

The applicants put forward five pleas in support of annulment:

- The first plea is based on the Commission's infringement of the right of the parties concerned in the proceedings to be heard, since the Commission adopted the contested decision, the findings of which are diametrically opposed to those contained in the initial decision, without re-opening the formal procedure or giving the parties concerned the opportunity to submit their comments.
- The second plea consists of the complaint that the Commission is going beyond what is required by the judgment in Case T-146/03, which merely found fault with the lack of an adequate statement of reasons in certain aspects of the initial decision. Instead of correcting those details, the Commission revised elements of its initial decision which were not called into question by the court. Such conduct on the part of the Commission infringes the principles of legal certainty and the protection of legitimate expectations of concerned parties.
- Third, the applicants challenge the classification of the measure as State aid, on the ground that it is not enough to assert that, because they have a tax status which differs from that of companies, agricultural cooperatives whose trade is not 100 % with its members (the pure mutual cooperative model) enjoy an 'advantage', disregarding the fact that cooperatives and limited liability companies are not in a similar situation either in fact or in law. Moreover, even if such comparability were accepted — which is disputed — the tax arrangements of cooperatives do not entail any advantage, rather the differences are justified by the structure and nature of the Spanish tax system, as the Commission itself recognised in the initial decision, that aspect of which was not called into question by the judgment of 12 December 2006.
- Alternatively, as a fourth plea in law, the applicants argue that the Commission did not state adequate reasons and erred in its analysis of the compatibility of the measure, in the light of Article 107(3)(c) TFEU, and that the measure at issue should have been declared to be compatible.

— Lastly, the applicants challenge the order for recovery made in the contested decision

(¹) Boletín Oficial del Estado No 241/2000 of 7 October, p. 34614.
 (²) Case T-146/03 [2003] ECR II-98.

**Action brought on 8 April 2010 — Barilla v OHIM —
 Brauerei Schlösser (ALIXIR)**

(Case T-157/10)

(2010/C 148/76)

Language in which the application was lodged: English

Parties

Applicant: Barilla G. e R. Fratelli SpA (Parma, Italy) (represented by: A. Colmano, G. Sironi and A. Vanzetti, lawyers)

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

Other party to the proceedings before the Board of Appeal: Brauerei Schlösser GmbH (Düsseldorf, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 January 2010 in case R 820/2009-2;

— Dismiss the opposition filed by the other party to the proceedings before the Board of Appeal against the registration of the Community trade mark concerned;

— Alternatively, remit the case to the defendant so that it may dismiss the opposition; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs incurred in these proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark “ALIXIR”, for goods, among others, in class 32

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: German trade mark registration of the word mark “Elixeeer”, for goods in class 32

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly found that there was a likelihood of confusion between the trade marks concerned.

**Action brought on 8 April 2010 — Longevity Health
 Products v OHIM — Tecnifar (E-PLEX)**

(Case T-161/10)

(2010/C 148/77)

Language in which the application was lodged: English

Parties

Applicant: Longevity Health Products, Inc. (Nassau, Bahamas) (represented by: J. Korab, lawyer)

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

Other party to the proceedings before the Board of Appeal: Tecnifar — Industria Tecnica Farmaceutica, SA (Lisbon, Portugal)