

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

*Other party to the proceedings before the Board of Appeal:* Foreign Supplement Trademark Ltd (Oakville, Canada)

#### Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 January 2010 in case R 1621/2008-1, and remit the matter alternatively altered;
- In the alternative, alter the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 January 2010 in case R 1621/2008-1;
- Order the defendant to bear the costs incurred in these proceedings as well as those incurred before OHIM.

#### Pleas in law and main arguments

*Registered Community trade mark subject of the application for a declaration of invalidity:* The word mark "GAKIC" for goods in classes 5, 30 and 32.

*Proprietor of the Community trade mark cited in the invalidity proceedings:* The other party to the proceedings before the Board of Appeal

*Party requesting the declaration of invalidity of the Community trade mark:* The applicant

*Decision of the Cancellation Division:* Rejected the request for a declaration of invalidity

*Decision of the Board of Appeal:* Dismissed the appeal and, as a result, rejected the request for a declaration of invalidity of the registered Community trade mark in question

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Council Regulation No 207/2009, as the Board of Appeal: (i) repeated the error of the Cancellation Division and wrongly considered the case as if made under Article 7(1)(d), (ii) wrongly found significance in the fact that glycine-alpha-ketoisocaproic acid, of which GAKIC is an abbreviated form, is a patented compound in the United States, (iii) failed to consider material after the registration date, on the basis that it had no probative value, (iv) failed to consider evidence on the basis that

it related to a website connected with the applicant, (v) had an inconsistent approach, given the finding that GAKIC was an abbreviated form of glycine-alpha-ketoisocaproic acid, (vi) mischaracterised evidence and failed to give proper weight to evidence showing that 'GAKIC' was the natural abbreviation of glycine [(G)]-alpha [(A)]-ketoisocaproic [(KIC)] acid, and (vii) wrongly found trade mark significance in the capitalisation of the words 'GAKIC'.

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**Action brought on 27 April 2010 — DRV v OHIM — Austria Leasing (Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppe Österreich)**

**(Case T-199/10)**

(2010/C 179/84)

*Language in which the application was lodged:* German

#### Parties

*Applicant:* Deutscher Raiffeisenverband eV (DRV) (Bonn, Germany) (represented by: I. Rinke, 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:* Austria Leasing GmbH (Frankfurt, Germany)

#### Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 February 2010 (Case R 253/2009-1);
- Order the defendant to pay the costs.

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* Austria Leasing GmbH.

*Community trade mark concerned:* Figurative mark which contains the word elements 'Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppe Österreich', in respect of services in Classes 35, 36 and 37.

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

*Mark or sign cited in opposition:* inter alia, a figurative mark registered in Germany which contains the word element 'Raif-eisen', in respect of services in Classes 35, 36, 37, 38, 39, 40, 41 and 42.

*Decision of the Opposition Division:* 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 (EC) No 207/2009, <sup>(1)</sup> as there is a likelihood of confusion between the marks at issue.

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<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

## Action brought on 30 April 2010 — IVBN v Commission

(Case T-201/10)

(2010/C 179/85)

*Language of the case:* Dutch

### Parties

*Applicant:* Vereniging van Institutionele Beleggers in Vastgoed, Nederland (IVBN) (Voorburg, Netherlands) (represented by: M. Meulenbelt, lawyer)

*Defendant:* European Commission

### Form of order sought

- Declare the action admissible;
- annul the contested decision of the Commission;
- order the Commission to pay the costs.

### Pleas in law and main arguments

The applicant seeks annulment of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State

aid E 2/2005 and N 642/2009 (Netherlands) — Existing and special project aid to housing corporations. The applicant relies on three pleas in law in support of its application.

First, the applicant alleges infringement of Articles 18 and 19 of Regulation No 659/1999, <sup>(1)</sup> Articles 106(2) TFEU, 107 TFEU and 108 TFEU and the obligation to state reasons. According to the applicant, the Commission's presentation of the facts concerning the obligation on the part of housing corporations to charge rents below the appropriate rental rates set by the State is inaccurate. Furthermore, according to the applicant, the definition of the target group for social housing provision is unsubstantiated and incorrect. The Commission also erred in failing to set an objective limit on the construction costs of housing that is to be funded by aid and on the intrinsic quality of such rental accommodation, as reflected in the amount of rent. Furthermore, the safeguards against overcompensation are inadequate, with the result that the Commission is also in breach of Article 5 of the Decision relating to services of general economic interest. <sup>(2)</sup> Finally, the applicant submits in that regard that the Commission failed to address the applicant's complaint concerning the role of the Woningeninvesteringfond (Housing Investment Fund) and the Nederlandse Waterschapsbank.

Second, the applicant alleges infringement of Article 1(c) of Regulation No 659/1999, Article 4(1) of Regulation No 794/2004 <sup>(3)</sup> and the obligation to state reasons. According to the applicant, the Commission failed to carry out a thorough and detailed examination and to establish that all or at least a substantial part of the aid to housing corporations referred to in case E 2/2005 is to be regarded as new aid instead of as existing aid.

Finally, the applicant submits that the Commission infringed Articles 106(2) TFEU, 107 TFEU and 108 TFEU by neglecting to initiate the formal investigation procedure provided for under Article 108(2) TFEU, in conjunction with Articles 4 and 6 of Regulation No 659/1999, as a result of which the applicant's procedural rights under those provisions have also been infringed.

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<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

<sup>(2)</sup> Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (notified under document number C(2005) 2673) (OJ 2005 L 312, p. 67).

<sup>(3)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 2004 L 140, p. 1).