

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant advances five pleas in law in support of its application.

On the basis of its first plea, the applicant claims that the contested decision infringes Articles 63(2), 75 and 76 of Council Regulation (EC) No 207/2009 (hereinafter 'CTMR') and breaches its right to be heard, as the Board of Appeal did not invite the parties to comment on its intent to replace the relevant opposing registration.

By its second plea, the applicant considers that the contested decision infringes Article 41 of CTMR in conjunction with Rule 15(2)(f) of the Implementing Regulation, as the board of Appeal took into account goods that were not properly identified in the notice of opposition and within the deadline for filing the opposition.

By its third plea, the applicant states that the contested decision infringes Articles 42(2), 42(3) and 15 CTMR, as the Board of Appeal did not properly assess the scope of the registered goods against the evidence of use submitted.

By its fourth plea, the applicant claims that the contested decision infringes Articles 76 CTMR in conjunction with Rule 50(1), and Rule 19(1) and (3) of the Implementing Regulation, as the Board of Appeal falsely took into account an enhanced distinctiveness of the earlier mark.

Finally, on the basis of its fifth plea, the applicant considers that the contested decision infringes Article 8(1)(b) of CTMR, as the Board of Appeal falsely assumed a high similarity between the goods. With respect to the similarity between the signs the Board of Appeal failed to assume that the signs are dissimilar or remotely similar owing to the uniform character of 'BELLRAM' in the Spanish language. The signs 'BELLRAM' and 'RAM' are not confusable because the goods are remotely similar and the signs dissimilar or remotely similar.

Action brought on 3 May 2011 — Sigma Alimentos Exterior v Commission

(Case T-239/11)

(2011/C 204/47)

Language of the case: Spanish

Parties

Applicant: Sigma Alimentos Exterior SL (Madrid, Spain) (represented by: M. Ferre Navarrete, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul Article 1(1) of the contested decision to the extent that it declares that Article 12(5) of the Texto Refundido de la Ley del Impuesto sobre Sociedades ('TRLIS') (the consolidated text of the Spanish Company Tax Act) contains elements of State aid;
- alternatively, annul Article 1(1) of the contested decision to the extent that it declares that Article 12(5) of TRLIS contains elements of State aid when applied to acquisitions of shareholdings which involve acquisition of control;
- alternatively, annul Article 4 of the contested decision to the extent that it orders recovery in respect of transactions carried out prior to the publication in Official Journal of the European Union of the final decision under appeal;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant in these proceedings acquired shareholdings in companies established in the United States and in Peru during the tax years 2008 to 2010 and amortized the financial goodwill generated in the acquisition of majority shareholdings in those companies, pursuant to Article 12(5) of TRLIS.

On 12 January 2011 the Commission adopted the contested decision C(2010) 9566 final on the tax amortization of financial goodwill for foreign shareholding acquisitions No C 45/2007 (ex NN 51/2007, ex CP 9/2007). As a consequence of that decision, the Administración Tributaria (Spanish tax authority) commenced verification procedures with the objective of correcting the amortizations applied by the applicant.

In support of its action the applicant relies on two pleas in law:

1. First plea, based on the failure to satisfy the requirements necessary to consider the measure as State aid.
 - The applicant maintains in this regard that the main reason why the tax system at issue cannot be considered to be State aid is the fact that the measure concerned is not selective. The Commission commits an error when it holds that there is *de facto* selectivity because the measure favours national acquisitions and because a shareholding of at least 5 % is required. The applicant claims that the Commission arrives at that conclusion by dispensing with any analysis of the types of businesses and business sectors in which the companies which have applied that system intervene.
2. Second plea, based on the failure to state reasons for the decision.

The applicant considers that the grounds on which the Commission bases its view that there are no explicit legal obstacles in the acquisition of companies in the United States and in Peru are manifestly insufficient.
