

2. Second plea in law, alleging infringement of the obligation to state reasons in accordance with Article 296 TFEU

Furthermore the applicant submits that there is infringement of the obligation to state reasons pursuant to Article 296 TFEU because the Commission was satisfied with sweeping assumptions and deductions, but did not explain why the loan conditions were not market conditions and why it was suddenly departing from its previous decision-making practice.

3. Third plea in law, alleging infringement of the principle of the rights of the defence in its various forms

The applicant further submits that there is infringement of the principle of the rights of the defence in its various forms as the Commission did not discuss the change in its view with the Federal Government before the adoption of the contested decision.

⁽¹⁾ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ 2006 L 379, p. 5).

Action brought on 26 September 2011 — Aldi v OHIM — Dialcos (dialdi)

(Case T-505/11)

(2011/C 355/38)

Language in which the application was lodged: German

Parties

Applicant: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany) (represented by: N. Lützenrath, U. Rademacher, L. Kolks and C. Fürsen, lawyers)

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

Other party to the proceedings before the Board of Appeal: Dialcos SpA (Due Carrare, Italy)

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 5 July 2011 in Case R 1097/2010-2;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Dialcos SpA

Community trade mark concerned: Figurative mark containing the word element 'dialdi' for goods in Classes 29 and 30.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Word mark 'ALDI' for goods and services in Classes 3, 4, 7, 9, 16, 24, 25, 29, 30, 31, 32, 33, 34 and 36.

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 No 207/2009, since there is a likelihood of confusion between the marks at issue.

Action brought on 28 September 2011 — i-content v OHIM — Decathlon (BETWIN)

(Case T-514/11)

(2011/C 355/39)

Language in which the application was lodged: English

Parties

Applicant: i-content Ltd Zweigniederlassung Deutschland (Berlin, Germany) (represented by: A. Nordemann, lawyer)

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

Other party to the proceedings before the Board of Appeal: Decathlon SA (Villeneuve d'Ascq, France)

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 30 June 2011 in case R 1816/2010-1, and reject the opposition No B 001494205;

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'BETWIN', among others for goods in classes 25, 26 and 28 — Community trade mark application No 7281652

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 in opposition: Community trade mark registration No 6780951, of the figurative mark 'bTwin', among others for goods in classes 25 and 28; French trade mark registration No 23191414, of the figurative mark 'bTwin', inter alia for goods in class 25; French trade mark registration No 99822017, of the figurative mark 'bTwin', inter alia for goods in class 28

Decision of the Opposition Division: Partially upheld the opposition

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 assessed that the marks in dispute are confusingly similar.

Action brought on 27 September 2011 — Delphi Technologies v OHIM (INNOVATION FOR THE REAL WORLD)

(Case T-515/11)

(2011/C 355/40)

Language of the case: English

Parties

Applicant: Delphi Technologies, Inc. (Wilmington, United States of America) (represented by: C. Albrecht and J. Heumann, lawyers)

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

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 23 June 2011 in case R 1967/2010-2;

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'INNOVATION FOR THE REAL WORLD', for goods in classes 7, 9, 10 and 12 — Community trade mark application No 7072705

Decision of the Examiner: Refused the application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal: (i) misunderstood the burden of arguments and proof laid down in Article 7(1)(b); (ii) erred in applying the relevant case law of the ECJ for the assessment of distinctiveness of slogans and the possible meaning of the mark applied for; and, (iii) neglected the substantial use and notoriety of the mark which is important for the perception of the slogan by the relevant consumers. Infringement of Article 7(1)(b) of Council Regulation No 207/2009 and the general principles of the administrative proceedings, as the Board of Appeal did not take into account that identical and similar slogans with the word 'INNOVATION' have already been registered in the EU and in particular by the OHIM.

Action brought on 29 September 2011 — United States Polo Association v OHIM — Polo/Lauren (Representation of a device of two polo players)

(Case T-517/11)

(2011/C 355/41)

Language in which the application was lodged: English

Parties

Applicant: United States Polo Association (Kentucky, USA) (represented by: P. Goldenbaum, I. Rohr and T. Melchert, lawyers)

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

Other party to the proceedings before the Board of Appeal: The Polo/Lauren Company, LP (New York, USA)

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 17 June 2011 in case R 1107/2010-2;

— Order the defendant to pay its own costs and those of the applicant; and

— Order the other party before the Board of Appeal to pay its own costs, in case it intervenes in the proceedings

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Community trade mark application of the figurative mark representing a device of two polo players, for goods in class 3 — Community trade mark registration No 5997473

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 in opposition: French trade mark registration No 1441630 of the figurative mark representing a device of a polo player, for goods and services in classes 3, 9, 14, 16, 18, 24, 25 and 35; Spanish trade mark registration No 878316 of the figurative mark representing a device of a polo player, for goods in class 3; United Kingdom trade mark registration No 2172123 of the figurative mark representing a device of a polo player, for goods in class 3; German trade mark registration No 1070650 of the figurative mark representing a device of a polo player, for goods in class 3; Community trade mark registration No 4236527 of the three-dimensional trade mark representing a bottle device with a polo player, for goods in class 3