

5. Fifth plea in law: error of law in that the Commission took the view that the obligation to recover EUR 41 million of aid was transferred to Financière Sernam and to its subsidiaries, whereas Financière Sernam cannot be regarded as having benefited from an advantage inasmuch as it paid the market price for Sernam's assets *en bloc*.
6. Sixth plea in law: inadequate statement of reasons and errors of fact and of law in that the Commission took the view that the measures provided for in the memorandum of understanding relating to the transfer of Sernam's assets *en bloc* constituted State aid, whereas the price paid for the acquisition was a market price resulting from an open, transparent, unconditional and non-discriminatory tendering procedure and was well below the liquidation costs that the applicant would have had to bear had Sernam been placed in liquidation by court order.

(¹) State Aid No C 37/2008 — France — Enforcing the 'Sernam 2' decision — SA.12522.

(²) Commission Decision 2006/367/EC of 20 October 2004 on the State aid partly implemented by France for the 'Sernam' company (notified under document number C(2004) 3940) (OJ 2006 L 140, p. 1).

Action brought on 25 June 2012 — Bimbo v OHIM — Café do Brasil (Caffè KIMBO)

(Case T-277/12)

(2012/C 273/20)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

Other party to the proceedings before the Board of Appeal: Café do Brasil SpA (Melito di Napoli, Italy)

Form of order sought

— Modify the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 May 2012 in case R 1017/2011-4;

— In the alternative and only in the case the former claim would be rejected, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 May 2012 in case R 1017/2011-4; and

— Order the defendant and the other party to the proceedings to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark in black, red, gold and white 'Caffè KIMBO', for goods in classes 11, 21 and 30 — Community trade mark application No 3478311

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

Mark or sign cited in opposition: Spanish trade mark registration No 291655 of the word mark 'BIMBO' for goods in class 30; Earlier well-known mark in Spain 'BIMBO' for goods in class 30

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Partially annulled the contested decision and dismissed the appeal for the remainder

Pleas in law:

— Infringement of Articles 64, 75 and 76 of Council Regulation (EC) No 207/2009; and

— Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009.

Action brought on 22 June 2012 — Inter-Union Technohandel v OHIM — Gumersport Mediterranea de Distribuciones (PROFLEX)

(Case T-278/12)

(2012/C 273/21)

Language in which the application was lodged: English

Parties

Applicant: Inter-Union Technohandel GmbH (Landau in der Pfalz, Germany) (represented by: K. Schmidt-Hern and A. Feutlinske, lawyers)

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

Other party to the proceedings before the Board of Appeal: Gumersport Mediterranea de Distribuciones, SL (Barcelona, Spain)

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 27 March 2012 in case R 413/2011-2; and