

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the defendant erred in law in concluding, in the Contested Decision, that the lower rate tax constituted unlawful State aid. Specifically, the Commission erred in characterising the higher rate tax as the 'normal' rate of tax, for the purposes of determining whether the lower rate tax constituted a selective advantage. Since the higher rate tax was invalid pursuant to directly effective provisions of EU law, it could not properly be regarded as the 'normal' reference rate for this purpose. For the same reasons the Commission erred in finding that the airlines subject to the lower rate tax benefited from an advantage corresponding to €8 per passenger.
2. Second plea in law, alleging that even if the Commission could properly characterise the lower rate tax as constituting State aid within the meaning of Article 107(1) TFEU, the order for recovery of the aid from the airlines subject to the lower rate tax, in circumstances where the higher rate tax was also liable to be repaid simultaneously, infringed the principle of legal certainty, the principle of effectiveness and the principle of good administration. Accordingly, the Contested Decision, in ordering recovery of the aid, was in breach of Article 14 of Council Regulation (EC) No 659/99 ⁽¹⁾.
3. Third plea in law, alleging that the defendant also erred in law and fact by identifying the airline operators subject to the lower rate tax as the beneficiaries of the alleged aid in the amount of EUR 8 per passenger, and ordering recovery of the aid on that basis, in circumstances where the Commission acknowledged that the burden of the tax may have been carried by passengers, who were therefore the primary beneficiaries of the lower rate.
4. Fourth plea in law, alleging that since it is impossible to recoup the EUR 8 per passenger retrospectively from the passengers that benefited from the lower rate tax, the recovery order in these circumstances operates as an additional tax on the relevant airlines, and thereby amounts to unlawful penalisation of those airlines rather than the restoration of the situation prior to the grant of the alleged aid. This is disproportionate and a breach of the principle of equal treatment and therefore a further breach of Article 14 of Council Regulation (EC) No 659/99.
5. Fifth plea in law, alleging that the defendant gave no, or insufficient, reasons for ordering recovery of the aid and for quantifying the aid in the amount of EUR 8 per passenger.

⁽¹⁾ 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)

Action brought on 5 November 2012 — Coca-Cola v OHIM — Mitico (Master)

(Case T-480/12)

(2013/C 26/105)

Language in which the application was lodged: English

Parties

Applicant: The Coca-Cola Company (Atlanta, United States) (represented by: S. Malynicz, Barrister, D. Stone and L. Ritchie, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Modern Industrial & Trading Investment Co. Ltd (Mitico) (Damascus, Syria)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 August 2012 in case R 2156/2011-2; and
- Order the defendant and the other party to the proceedings before the Board of Appeal to bear their own costs and pay those of the applicant.

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 'Master', for goods in classes 29, 30 and 32 — Community trade mark application No 9091612

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

Mark or sign cited in opposition: Community trade mark registration No 8792475 of the figurative mark 'Coca-Cola'; Community trade mark registration No 3021086 of the figurative mark 'Coca-Cola'; Community trade mark registration No 2117828 of the figurative mark 'Coca-Cola'; Community trade mark registration No 2107118 of the figurative mark 'Coca-Cola'; United Kingdom trade mark registration No 2428468 of the figurative mark 'C'

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) and 8(5) of Council Regulation No 207/2009

Action brought on 29 October 2012 — Internationaler Hilfsfonds v European Commission

(Case T-482/12)

(2013/C 26/106)

Language of the case: German

Parties

Applicant: Internationaler Hilfsfonds eV (Rosbach, Germany) (represented by: H.-H. Heyland, lawyer)

Defendant: European Commission

Form of order sought

— Annul the defendant's implicit decision by which it rejected the applicant's second application of 4 October 2012;

— In the alternative, annul the defendant's decision of 28 August 2012 on account of its failure to take into account the requirements arising from the judgment of the General Court of 22 May 2012 in Case T-300/10;

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant argues essentially that in its decision the Commission partially failed to take into account the requirements arising from the judgment of the General Court of 22 May 2012 in Case T-300/10 *Internationaler Hilfsfonds v Commission*, not yet published in the ECR.

Action brought on 5 November 2012 — Nestlé Unternehmungen Deutschland v OHIM — Lotte (LOTTE)

(Case T-483/12)

(2013/C 26/107)

Language in which the application was lodged: German

Parties

Applicant: Nestlé Unternehmungen Deutschland GmbH (Frankfurt am Main, Germany) (represented by: A. Jaeger-Lenz, lawyer)

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

Other party to the proceedings before the Board of Appeal: Lotte Co. Ltd (Tokyo, Japan)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2012 in case R 2103/2010-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Lotte Co. Ltd

Community trade mark concerned: Figurative mark containing the word element 'LOTTE' and an image of a koala on a tree, holding a smaller koala, for goods in Class 30 — Community trade mark application 6 158 463

Proprietor of the mark or sign cited in the opposition proceedings: Nestlé Unternehmungen Deutschland GmbH

Mark or sign cited in opposition: National figurative marks containing the word elements 'KOALA BÄREN' and 'KOALA' and an image of a koala holding a smaller koala, for goods in Class 30

Decision of the Opposition Division: Opposition allowed

Decision of the Board of Appeal: Appeal granted; decision of the Opposition Division annulled

Pleas in law: Infringement of Article 42(2) and (3) of Regulation No 207/2009, Rule 22(2) of Regulation No 2868/95 and Article 15(1) of Regulation No 207/2009

Action brought on 6 November 2012 — CeWe Color v OHIM (SMILECARD)

(Case T-484/12)

(2013/C 26/108)

Language of the case: German

Parties

Applicant: CeWe Color AG & Co. OHG (Oldenburg, Germany) (represented by U. Sander, lawyer)

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