

**Action brought on 4 April 2013 — Murnauer  
Markenvertrieb v OHIM — Healing Herbs (NOTFALL)**

(Case T-188/13)

(2013/C 156/90)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Murnauer Markenvertrieb GmbH (Trebur, Germany)  
(represented by: F. Traub and H. Daniel, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Healing  
Herbs Ltd (Walkerstone, United Kingdom)

**Form of order sought**

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the  
Office for Harmonisation in the Internal Market (Trade  
Marks and Designs) of 4 February 2013 in Case  
R 132/2012-4;

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of  
invalidity has been sought:* the word mark 'NOTFALL' for goods in  
Classes 3, 5 and 30 — Community trade mark No 9 089 681

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity of the Community trade  
mark:* Healing Herbs Ltd

*Grounds for the application for a declaration of invalidity:* Article  
52(1)(a) of Regulation No 207/2009 in conjunction with  
Article 7(1)(b) and (c) and Article 7(2) of Regulation  
No 207/2009

*Decision of the Cancellation Division:* the application was upheld in  
part

*Decision of the Board of Appeal:* the appeal was dismissed

*Pleas in law:*

— Infringement of Article 83 of Regulation No 207/2009 in  
conjunction with the general principle of equal treatment

— Infringement of Article 7(1)(c) of Regulation No 207/2009

— Infringement of Article 7(1)(b) of Regulation No 207/2009

**Action brought on 2 April 2013 — Gemeente  
Leidschendam-Voorburg v Commission**

(Case T-190/13)

(2013/C 156/91)

*Language of the case: Dutch*

**Parties**

*Applicant:* Gemeente Leidschendam-Voorburg (Leidschendam-  
Voorburg, Netherlands) (represented by: A. de Groot and J.J.M.  
Sluijs, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul the contested decision; and

— order the Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicant challenges Commission Decision C(2013) 87 of  
23 January 2013 on State aid SA.24123 (2012/C) (ex  
2011/NN) implemented by the Netherlands — Alleged sale of  
land below market price by the Municipality of Leidschendam-  
Voorburg.

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

1. First plea in law, alleging breach of essential procedural  
requirements and/or of the obligation to state reasons.

— In the first place the Commission allowed an unrea-  
sonably long period of time to elapse before initiating  
the procedure under Article 108(2) TFEU, as a result  
of which the parties were entitled to assume that the  
agreement at issue was not incompatible with Article  
107(1) TFEU.

— In the second place there were errors and omissions in  
the Commission's assessment of the facts.

— In the third place, the Commission erred in its deter-  
mination of the facts with regard to financing through  
State resources.

2. Second plea in law, alleging misapplication of Article 107(1) TFEU.

— In the first place the Municipality acted as a private undertaking would have done in the same circumstances.

— In the second place Schouten & De Jong Projectontwikkeling BV together with Bouwfonds Ontwikkeling BV did not obtain any benefit that they would not also have obtained via the market in the ordinary course of business.

3. Third plea in law, concerning Article 107(3) TFEU. Should the Municipality be found to have granted aid, this should be regarded as being compatible with Article 107(3) TFEU.

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**Action brought on 2 April 2013 — Bouwfonds  
Ontwikkeling and Schouten & De Jong  
Projectontwikkeling v Commission**

(Case T-193/13)

(2013/C 156/92)

*Language of the case: Dutch*

**Parties**

*Applicants:* Bouwfonds Ontwikkeling BV (Hoevelaken, Netherlands) and Schouten & De Jong Projectontwikkeling BV (Leidschendam, Netherlands) (represented by: E. Pijnacker Hordijk and X. Reintjes, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul the contested decision; and

— order the Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicants challenge Commission Decision C(2013) 87 of 23 January 2013 on State aid SA.24123 (2012/C) (ex 2011/NN) implemented by the Netherlands — Alleged sale of land below market price by the Municipality of Leidschendam-Voorburg.

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging breach of the fundamental requirement that the Commission exercise its powers within a reasonable period of time, and thus breach of the principle of legal certainty and of the rights of the defence and of Article 41 of the Charter of Fundamental Rights of the European Union.

By allowing around 38 months to elapse between its becoming aware of the measures at issue and adoption of the contested decision, the Commission wrongfully acted in a dilatory manner and one that was thus contrary to the fundamental requirement that it should act within a reasonable period of time. In addition, as a result of the excessively long investigation period, it was more difficult for the applicants to counter the Commission's arguments, the Commission having, by its conduct, thereby also breached the rights of the defence.

2. Second plea in law, alleging serious deficiencies in the determination and assessment of the relevant facts and/or breach of the obligation to state reasons and/or infringement of Article 107(1) TFEU by the Commission's incorrect application of the private investor principle

Overall, the applicants did not obtain a financial benefit, let alone any financial benefit that might be regarded as unlawful State aid.

The Commission miscalculated the amount of the alleged benefit in that it, inter alia, attributed 100 % of the agreed price reductions to the Municipality, whereas the price reduction was borne by a public private partnership in which the Municipality bore 50 % of the risk. The Commission also disregarded earlier price reductions agreed within that partnership, without giving reasons for doing so.

Furthermore, the Commission incorrectly applied the private investor principle in the contested decision by assessing the Municipality's conduct by reference to the — legally not practicable and in any event financially exceedingly unfavourable — hypothetical conduct of a notional private investor.

3. Third plea in law, alleging incorrect application of Article 107(3) TFEU

If it is determined that there is State aid, such aid is in any case fully compatible with the internal market. The Commission wrongly took the view that the Municipality was unable to demonstrate that the measures at issue had any common interest objective. In so doing it wrongly assessed the 2009/2010 measures at issue against the background of the (more favourable) market situation prevailing in 2004.

The Commission thereby failed to appreciate that the measures at issue were necessary for, and appropriate and proportionate to the revitalisation of the run-down town centre of Leidschendam, an objective which chimes with the clearly described and recognised EU objective of economic and social cohesion within the meaning of Article 3 TEU and Article 174 TFEU. There can be no question of any undue distortion of competition.