

**Action brought on 21 March 2014 — Schmiedag v Commission****(Case T-183/14)**

(2014/C 142/67)

*Language of the case: German***Parties**

*Applicant:* Schmiedag GmbH (Hagen, Germany) (represented by: H. Höfler, C. Kahle and V. Winkler, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul the defendant's decision, in respect of State aid SA.33995 (2013/C) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, to initiate the formal procedure under Article 108(2) TFEU, notified with the invitation to submit comments (OJ 2014 C 37, p. 73);
- order the defendant to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicant relies in essence on the following pleas in law:

## 1. Breach of essential procedural requirements

- The applicant submits here that the defendant failed to give sufficient reasons, in accordance with the second paragraph of Article 296 TFEU, for its decision to initiate a formal investigation procedure under Article 108(2) TFEU. The decision to initiate the investigation procedure contains no specific substantive assessment based on factual and legal aspects with regard to the existence of all the constituent elements for the purpose of Article 107(1) TFEU.

## 2. Infringement of the Treaties

- The applicant submits here that the Commission's decision to initiate the investigation procedure infringes Article 107(1) TFEU. In this respect, the applicant states that the European Court of Justice has already held in Case C-397/98 *PreussenElektra* [2001] ECR I-2099 that the Law on the priority of renewable energy sources ('EEG') does not grant any aid. The EEG remains in force essentially unchanged. Particularly the essential aspects for the State aid assessment have remained unchanged. The same applies to the defendant's decision of 22 May 2002 (OJ 2002 C 164, p. 5), in which the defendant stated that the EEG did not constitute aid.
- The applicant further submits that the reduced EEG-surcharge does not fulfil the State aid conditions under Article 107(1) TFEU. In that regard, it submits, in particular, that the reduced EEG-surcharge does not constitute an advantage which a user would not have received under normal market conditions, that it is not selective, that it is not aid granted by a Member State or through State resources and that it does not result in a distortion of competition or in a possible effect upon trade between Member States.

## 3. Compatibility with the common market

- If the Court is of the opinion that State aid exists, that aid would, in the applicant's view, be compatible with the common market in accordance with Article 107(3)(b) and (c) TFEU.

**Action brought on 21 March 2014 — Atlantic Multipower Germany v OHIM — Nutrichem Diät + Pharma (NOxtreme)****(Case T-186/14)**

(2014/C 142/68)

*Language in which the application was lodged: German***Parties**

*Applicant:* Atlantic Multipower Germany GmbH & Co. OHG (Hamburg, Germany) (represented by: W. Berlit, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Nutrichem Diät + Pharma GmbH (Roth, Germany)

### **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 29 January 2014 in Case R 764/2013-4;
- Annul the decision of the Cancellation Division of 12 April 2013 (filing No: 6333C);
- Order the intervener to pay the costs including those incurred in the course of the appeal proceedings.

### **Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* the word mark 'NOxtreme' for goods in Classes 5, 29, 30 and 32 — Community trade mark No 10 177 889

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity of the Community trade mark:* Nutrichem Diät + Pharma GmbH

*Grounds for the application for a declaration of invalidity:* the national and Community figurative marks, including the word element 'X-TREME', for goods in Classes 5, 29 and 32

*Decision of the Cancellation Division:* the application for a declaration of invalidity was granted

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

*Pleas in law:*

- Infringement of Article 57(2) and (3) in conjunction with Article 42(2) and (3) of Regulation No 207/2009;
- Infringement of Article 8(1)(b) of Regulation No 207/2009

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### **Order of the General Court of 14 February 2014 — Alfa-Beta Vassilopoulos v OHIM — Henkel (AB terra Leaf)**

(Case T-522/12) <sup>(1)</sup>

(2014/C 142/69)

*Language of the case:* English

The President of the First Chamber has ordered that the case be removed from the register.

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<sup>(1)</sup> OJ C 32, 2.2.2013.

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### **Order of the General Court of 10 February 2014 — Jinko Solar and Others v Parliament and Others**

(Case T-142/13) <sup>(1)</sup>

(2014/C 142/70)

*Language of the case:* English

The President of the Fifth Chamber has ordered that the case be removed from the register.

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<sup>(1)</sup> OJ C 123, 27.4.2013.

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