

Questions referred

The questions concern the interpretation and application of Article 9(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark where third parties use, without consent, in the course of trade, a sign similar to a Community trade mark ⁽¹⁾.

The questions are:

1. Does it affect the proprietor's exclusive right that, within a period of five years following registration, he has not made genuine use of the Community trade mark in the European Union for goods or services covered by the registration?
2. If the answer to question 1 is in the affirmative, in what circumstances and in what way does that situation affect the exclusive right?

⁽¹⁾ OJ 2009 L 78, p. 1.

Appeal brought on 7 December 2015 by European Commission against the judgment of the General Court (Eighth Chamber) delivered on 24 September 2015 in Case T-674/11 TV2/Danmark A/S v European Commission

(Case C-656/15 P)

(2016/C 048/32)

Language of the case: Danish

Parties

Appellant: European Commission (represented by: ved B. Stromsky, T. Maxian Rusche and L. Grønfeldt, acting as Agents)

Other parties to the proceedings: TV2/Danmark A/S, Kingdom of Denmark, Viasat Broadcasting UK Ltd

Form of order sought

Set aside the judgment of the judgment of the General Court (Eighth Chamber) delivered on 24 September 2015 in Case T-674/11 TV2/Danmark A/S v *European Commission*, in so far as it annuls Commission Decision 2011/839/EU of 20 April 2011 concerning Danish measures (C 2/03) in favour of TV2/Danmark ⁽¹⁾ in so far as that decision finds that advertising revenue from 1995 and 1996 constitutes State aid.

Dismiss the third alternative claim of the applicant at first instance on its merits.

Order the applicant at first instance to pay the costs.

Pleas in law and main arguments

The appellant submits that the General Court erred by misinterpreting the concept of 'State resources' in Article 107(1) TFEU, including the concept of 'control', and in failing to provide a proper statement of reasons.

The essential points of the appellant's arguments put forward in support of its appeal are as follows:

- The General Court erred in paragraphs 210 and 211 by failing to recognise that TV2 Reklame's resources are State resources because TV2 Reklame is a State-owned company; the General Court applied an overly narrow interpretation of the case-law concerning the concept of State resources from State-owned businesses.
- The General Court erred in law by applying an overly narrow interpretation of the concept of 'control' in its assessment of the State's control over TV2 Reklame's resources. Similarly, it erred in paragraph 215 by also interpreting too narrowly the concept of 'control' in its assessment of the State's control of the resources in the TV2 Fund.
- The General Court erred in law by misinterpreting the judgment in *PreussenElektra*, C-379/98, ECLI:EU:C:2001:160. That misinterpretation plays a central role in the general Court's reasons for annulling the contested decision.

⁽¹⁾ OJ 2011 L 340, p. 1.