

- The Applicant further puts forward that the AGL is an indirect tax levied on the consumption of aggregates and intended (by the UK Government) to be passed on by the undertakings extracting and commercially exploiting the aggregates, to their customers. The economic advantage arising from the shale exemptions, so the Applicant claims, could have been –and indeed actually was– passed on by the shale producers (including the Applicant) in the form of lower prices for the sale.
- The Applicant further puts forward that for the same reason, recovery of the full amount of unpaid aggregates levy could not ensure the re-establishment of the status quo ante and would be liable to create additional distortions of competition, since it could lead to the recovery of more from the shale producers (including the Applicant) than the advantage they actually enjoyed.
- Accordingly, so the Applicant states, following Cases T-473/12, Aer Lingus/Commission (ECLI:EU:T:2015:78) and T-500/12, Ryanair/Commission (ECLI:EU:T:2015:73), the only aid falling to be recovered from the shale producers is the advantage actually obtained and retained by them.
- Finally, the Applicant puts forward that insofar as the contested decision requires the recovery from the shale producers of the full amount of the AGL from which they were exempted under the shale exemptions, without any reduction to take account of the benefit passed on by the shale producers to their customers, the Commission made an error of law, wrongly applied Article 108 TFUE and/or Article 14 of Council Regulation (EC) 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1) and/or made a manifest error of assessment.

2. Second plea in law, alleging an infringement of the EU principle of proportionality.

The Applicant puts forward that in breach of Article 14(1) of Council Regulation (EC) 659/1999, recovering the full amount of unpaid aggregates levy from the Applicant in relation to the shale it exploited would be disproportionate to any financial advantage arising from the placing of the aid at its disposal. The Applicant passed on the entire benefit of the exemption from AGL to its customers and it would be impossible in practice for it to recover retroactively that unpaid AGL from its customers.

Action brought on 14 June 2016 — Lidl Stiftung v EUIPO — Primark Holdings (LOVE TO LOUNGE)

(Case T-305/16)

(2016/C 287/32)

Language in which the application was lodged: English

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Kefferpütz and A. Berger, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Primark Holdings (Dublin, Ireland)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'LOVE TO LOUNGE' — EU trade mark No 8 500 548

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 9 March 2016 in Case R 489/2015-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and declare invalid EU trade mark No 8 500 548;
- order the defendant to pay the costs of the proceedings;
- order the intervener to pay the costs of the proceedings before the EUIPO.

Pleas in law

- Infringement of Article 75 and 76 of Regulation No 207/2009;
- Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009.

Action brought on 13 June 2016 — Marsh v EUIPO (ClaimsExcellence)

(Case T-308/16)

(2016/C 287/33)

Language of the case: German

Parties

Applicant: Marsh GmbH (Frankfurt am Main, Germany) (represented by: W. Riegger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: EU word mark 'ClaimsExcellence' — Application No 13 847 462

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 8 April 2016 in Case R 2358/2015-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs, including those incurred in the course of the appeal proceedings.