

- ‘Rucksacks; small rucksacks; bags for climbers’ in Class 18;
- order EUIPO and the other party to the proceedings before the Board of Appeal of EUIPO to pay the costs of the proceeding.

#### **Plea(s) in law**

- Infringement of Article 8(1)(b) of Regulation No 207/2009.

---

### **Action brought on 16 November 2016 — Mayekawa Europe v Commission**

**(Case T-800/16)**

(2017/C 022/60)

*Language of the case: English*

#### **Parties**

*Applicant:* Mayekawa Europe NV/SA (Zaventem, Belgium) (represented by: H. Gilliams and J. Bocken, lawyers)

*Defendant:* European Commission

#### **Form of order sought**

The applicant claims that the Court should:

- annul the Commission decision of 11 January 2016 on the excess profit exemption state aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by the Kingdom of Belgium <sup>(1)</sup>;
- in the alternative, annul Articles 2-4 of the Decision;
- in any event, annul Articles 2-4 of that Decision in so far as these Articles (a) require recovery from entities other than the entities that have been issued an ‘excess profit ruling’ as defined in the Decision and (b) require the recovery of an amount equal to the beneficiary’s tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration; and
- order the Commission to pay the costs of the proceedings.

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

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

1. First plea in law, alleging a manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the contested decision alleges the existence of an aid scheme.
2. Second plea in law, alleging a violation of Article 107 TFUE and of the duty to state reasons and manifest error of assessment in so far as the contested decision asserts that the purported scheme as granting a selective advantage.
3. Third plea in law, alleging a violation of Article 107 TFUE and manifest error of assessment in so far as the contested decision asserts that the purported scheme gives rise to an advantage.

4. Fourth plea in law, alleging a violation of Article 107 TFUE, infringement of legitimate expectations and of the proportionality principle, manifest error of assessment, excess of power and failure to provide adequate reasons in so far as the contested decision orders Belgium to recover aid.

---

<sup>(1)</sup> Commission Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (notified under document C(2015) 9837) (OJ L 260, 2016, p. 61)

---

**Action brought on 08 November 2016 — Endoceutics v EUIPO — Merck (FEMIBION)**

**(Case T-802/16)**

(2017/C 022/61)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Endoceutics, Inc. (Quebec, Canada) (represented by: M. Wahlin, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Merck KGaA (Darmstadt, Germany)

**Details of the proceedings before EUIPO**

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

*Trade mark at issue:* EU word mark 'FEMIBION' — EU trade mark No 898 924

*Procedure before EUIPO:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 14 July 2016 in Case R 1608/2015-1

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision in part and revoke the EUTM for 'pharmaceutical preparations for immune system support, for menopause, for menstruation, for treatment and management of pregnancy, for the prevention, treatment and management of stress, for the prevention, treatment and management of stress ill-balanced or deficient nutrition';
- order the EUTM proprietor to pay the Applicant's costs on the appeal and with regard to the proceedings at the EUIPO.

**Plea in law**

- Infringement of Article 51(1)(a) of Regulation No 207/2009.
-