

Action brought on 13 November 2017 — TrekStor v EUIPO — Beats Electronics (i.Beat jump)**(Case T-746/17)**

(2018/C 032/48)

*Language in which the application was lodged: English***Parties***Applicant:* TrekStor Ltd (Hong-Kong, China) (represented by: O. Spieker, M. Alber, A. Schönfleisch, lawyers)*Defendant:* European Union Intellectual Property Office (EUIPO)*Other party to the proceedings before the Board of Appeal:* Beats Electronics LLC (Culver City, California, United States)**Details of the proceedings before EUIPO***Proprietor of the trade mark at issue:* Applicant*Trade mark at issue:* EU word mark 'i.Beat jump' EU trade mark No 4 729 075*Procedure before EUIPO:* Proceedings for a declaration of invalidity*Contested decision:* Decision of the Fourth Board of Appeal of EUIPO of 12 September 2017 in Case R 2236/2016-4**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision insofar as it upholds the Cancellation Applicant's application for revocation and revokes the Applicant's rights in respect of European Union trade mark No 4 729 075
- dismiss the Cancellation Applicant's application for revocation;
- order EUIPO to pay the costs of the proceedings including the costs necessarily incurred by the Applicant before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).

Pleas in law

- Infringement of Article 58(1)(a) of Regulation No 2017/1001;
- Infringement of Article 18(1)(a) of Regulation No 2017/1001.

Action brought on 15 November 2017 — UPF v Commission**(Case T-747/17)**

(2018/C 032/49)

*Language of the case: French***Parties***Applicant:* Union des Ports de France — UPF (Paris, France) (represented by: C. Vannini and E. Moraitou, lawyers)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action against decision C(2017) 5176 final of the European Commission of 27 July 2017 on aid scheme SA.38398 (2016/C, ex 2015/E) implemented by France ('the contested decision'), the applicant relies on five pleas in law.

1. First plea in law, alleging that the Commission erred in law by classifying the tax measure in its entirety as State aid, disregarding the criterion relating to the economic nature of the activity of the French ports. In that regard, the applicant considers that, by finding that the tax exemption in favour of French ports constitutes a State aid within the meaning of Article 107(1) of the TFEU, without specifying that the classification of aid is limited to the economic activities only of the ports, the Commission, in principle, vitiated its decision by an error of law.
2. Second plea in law, alleging that the Commission erred in law in relation to the assessment of the economic nature of the activities carried out by the French ports. The applicant claims that the Commission also erred in law in its analysis of the economic nature of the activities carried out by the French ports, in two respects:
 - In the first place, in that it totally failed to address in the contested decision some of the activities carried out by the French ports;
 - in the second place, in that, with regard to several other activities of the French ports, it merely reiterated the general principles derived from the case-law of the ECJ concerning public financing of port infrastructures without reaching a conclusion as to whether or not they are economic in nature although that is, it is claimed, the criterion for applying the State aid rules.
3. Third plea in law, alleging an error of law and inadequate reasoning as regards the conditions relating to the distortion of competition and the effect on trade between Member States, insofar as the Commission was wrong to consider that the tax exemption was liable to give rise to distortions of competition and to have an effect on trade between the Member States, as regards French ports in general and, more specifically, island ports and overseas ports. According to the applicant, the contested decision is vitiated by inadequate reasoning in so far as the Commission assumed, without substantiating its position, that those conditions were satisfied in the present case.
4. Fourth plea in law, alleging an error of law in the conduct of the existing aid review procedure and infringement of Article 108(1) and (2) TFEU, combined with the principle of proportionality, in so far as, first, by requiring that the French authorities provide evidence of the compatibility with the internal market of the exemption from corporation tax in favour of the French ports, the Commission reversed the burden of proof and acted as if it had received an application for approval of a new aid scheme. Secondly, by requiring the French authorities to simply abolish the exemption scheme without demonstrating that no modification to that measure could make it compatible with the EU rules on State aid, the Commission infringed Article 108(1) and (2) TFEU, Article 2 of Regulation No 2015/1589 and the principle of proportionality.
5. Fifth plea in law, alleging breach of the principle of sound administration in that the fact that the Commission requires the abolition of the exemption scheme while leaving in place port aid schemes in other Member States does not ensure a level playing field between the various European ports but, on the contrary, leads to further distortions of competition, in direct breach of the role conferred on the Commission as guarantor of the proper functioning of the internal market. The Commission therefore infringed the principle of impartiality which is the necessary corollary of the principle of good administration.

Action brought on 17 November 2017 — Commune de Fessenheim and Others v Commission

(Case T-751/17)

(2018/C 032/50)

Language of the case: French

Parties

Applicants: Commune de Fessenheim (Fessenheim, France), Communauté de communes Pays Rhin-Brisach (Volgelsheim, France), Conseil départemental du Haut-Rhin (Colmar, France) et Conseil régional Grand Est Alsace Champagne-Ardenne Lorraine (Strasbourg, France) (represented by: G. de Rubercy, lawyer)