

**Action brought on 9 July 2001 by Fallimento Distilleria F. Palma SpA against Commission of the European Communities**

(Case T-154/01)

(2001/C 259/24)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 July 2001 by Fallimento Distilleria F. Palma SpA, represented by Francesco Caruso, lawyer.

The applicant claims that the Court should:

- order the Commission to make good the damage allegedly suffered by the applicant as a result of the Commission's unlawful action which took the form of a memorandum sent to the Italian Ministero delle Risorse Agricole Alimentari e Forestali in November 1996, forwarded by that ministry to Distilleria Palma on 3 February 1997;
- order the Commission to pay all the costs.

*Pleas in law and main arguments*

The applicant in the present case contests the Commission's refusal, conveyed by the memorandum to the AIMA (Azienda di Stato per gli Interventi nel Mercato Agricolo — State Organization for Interventions in the Agricultural Market) of 11 November 1995 and forwarded by the AIMA to Distilleria on 3 February 1997, to allow the destruction of the residual alcohol not used in accordance with the conditions laid down in tender No 8/90/EC<sup>(1)</sup>.

It states in that connection that immediately after the award of the tender the first problems began to arise with regard to the disposal of the processed alcohol in accordance with the Commission's requirements (boycotts by the oil transport companies, a proposal for a directive on tax exemptions for biofuels), which led to an extraordinary increase in storage costs, made it more difficult to find sites for the alcohol removed from the intervention agencies, made it impossible to remove further quantities of alcohol and had a negative impact on the applicant's plans for its use.

Moreover, after the adoption of Regulation No 2710/93<sup>(2)</sup> the 'serious and persistent difficulty', which had heavily affected the market in recent times, and the 'special circumstances', which had prompted the Commission to cancel the tenders in respect of the lots of alcohol not taken out of intervention storage, did not change at all. The applicant, none the less, took the initiative and removed the second lot of alcohol, which had already been paid for since the May 1992. Despite

this and other efforts, the proper fulfilment of the requirements for performance laid down by the European Commission was hindered by new and unforeseeable obstacles.

In support of its arguments, the applicant claims that the contested decision is contrary to the principle exonerating economic operators on grounds of 'force majeure', which is expressly referred to in Regulation No 416/96<sup>(3)</sup>. Thus, the defendant showed itself to have been perfectly aware of having changed both times and means of giving effect to the tender offer by two subsequent regulations. Notwithstanding all this, and despite reasons beyond the control of the undertaking which was awarded the tender, the Commission, ex abrupto, interpreted particularly strictly the conditions laid down, most recently, in Regulation No 416/96.

Finally, the extreme, unreasonable and disproportionate nature of the contested decision is even more evident on careful consideration of the reason for the substantial security (a hefty ECU 90 per hectolitre of alcohol), which the applicant lodged at the time, which was to guarantee that it had removed the alcohol for food use. In the present case, it had pursued the objective, in guarantee of which it had provided the abovementioned security, and there was no likelihood that the market in alcohol for food use would be disrupted if the request to destroy the quantity remaining in storage had been acceded to.

(1) OJ 1990 C 296, p. 10.

(2) Commission Regulation (EEC) No 2710/93 of 30 September 1993 concerning certain special sales by tender of vinous alcohol held by intervention agencies, for use as motor fuel within the Community; OJ L 245, 01.10.1993, p. 131.

(3) Commission Regulation (EC) No 416/96 of 7 March 1996 amending Regulation (EEC) No 2710/93 concerning certain special sales by tender of vinous alcohol held by intervention agencies, for use as motor fuel within the Community; OJ L 59, 8.3.1996, p. 5.

**Action brought on 9 July 2001 by Laboratorios R.T.B., S.L. against Office for the Harmonization of the Internal Market (trade marks and designs) (OHIM)**

(Case T-156/01)

(2001/C 259/25)

(Language of the case: to be decided)

An action against Office for Harmonization in the Internal Market (trade marks and designs (OHIM)) was brought before

the Court of First Instance of the European Communities on 9 July 2001 by Laboratorios R.T.B., S.L., whose registered office is in Barcelona (Spain), represented by Arturo Canela Giménez.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the Office for the Harmonization of the Internal Market (OHIM) in Case 258/2000-1 on the ground that the disputed Community trade mark number 56 739 GIORGIO AIRE may not be registered pursuant to Article 8(1)(b) of Regulation (EC) No 40/94;
- declare invalid that Community trade mark;
- order the Office to pay the costs.

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

Applicant for the Community trade mark:	Giorgio Beverly Hills, Inc.
Registered Community trade mark:	Word mark 'GIORGIO AIRE' — Application No 56 739 for goods in Class 3
Proprietor of the right to the trade mark or sign asserted in the invalidity proceedings:	Applicant
Trade mark or sign asserted in the invalidity proceedings:	Spanish trade marks 'J. GIORGI', 'MISS GIORGI', 'GIORGI LINE', registered for goods in Class 3 and 'AIR GIORGI', registered for goods in Class 5
Decision of the Cancellation Division:	Application for declaration of invalidity of the trade mark upheld
Decision of the Board of Appeal:	Annulment of the decision of the Cancellation Division and dismissal of the application for declaration of invalidity

- Grounds of claim:
- Contrary to what is stated in the contested decision, the trade marks of which the applicant is the proprietor have been put to genuine use in the market, thus fulfilling the requirements of Article 56(3) of Regulation No 40/94<sup>(1)</sup>;
  - Contrary to what is stated in the contested decision, there is likelihood of confusion between the Community trade mark and the trade marks of which the applicant is the proprietor, since the differences between them do not allow the consumer to differentiate between them.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 1994, p. 1).

#### **Removal from the Register of Case T-207/99<sup>(1)</sup>**

(2001/C 259/26)

*(Language of the case: Spanish)*

By order of 17 May 2001, the President of the Second Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-207/99, Asociación Profesional de Fruticultores del Jalón Medio v Commission of the European Communities.

<sup>(1)</sup> OJ C 333 of 14.2.00.

#### **Removal from the Register of Case T-67/01 R**

(2001/C 259/27)

*(Language of the case: English)*

By order of 10 May 2001, the President of the Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-67/01 R, JCB Service v Commission of the European Communities.