Pleas in law and main arguments

SEB and Moulinex are active in the design, manufacture and sale of domestic electric appliances worldwide. A proposed merger of the two companies was notified to the Commission. The applicant in this case informed the Commission of its reservations in regard to the merger. The Commission none the less declared the transaction compatible with the common market and with the EEA Agreement, subject to compliance with the undertakings given. The applicant is challenging that decision. In support of its application the applicant relies first of all on an infringement of essential procedural requirements in accepting the undertakings proposed by SEB late. Undertakings must be submitted within three weeks from notification of a transaction. The Commission allowed SEB to submit new phase one undertakings five weeks after the transaction was notified. The applicant claims that those undertakings could in no circumstances be regarded as enhancing the original undertakings but constituted new undertakings.

Secondly, the applicant claims that the Commission erred in law in deciding to authorise the operation without carrying out an in-depth investigation. The applicant claims that the conditions for authorisation in phase one were not met. The undertakings proposed did not definitively resolve any serious doubts as to the compatibility of the transaction with the common market, as required by the Commission Notice on remedies.

Thirdly, the applicant considers that the Commission made a manifest error of assessment in that the undertakings imposed on SEB are insufficient to remove the competition concerns. The Commission therefore authorised the transaction without any undertakings on certain markets where there were serious competition concerns. Moreover, an undertaking to grant a trade mark licence is not by its nature sufficient to resolve the competition concerns that the transaction raises. The period for which the licence is granted is also insufficient for the licensee to switch Moulinex's products to its own brand in a market characterised by strong brand loyalty. Furthermore, the undertaking to supply the German market will have the effect of strengthening SEB/Moulinex's position on that market. Finally, the fact that the Commission agreed to the same trade mark being used by different companies within the European Union is liable to lead to coordinated behaviour by SEB/Moulinex and the licensees.

Fourthly, the applicant considers that the Commission erred in law by failing to examine the extent to which the derisory sum paid and the financial aid provided by the French State was likely to strengthen even further SEB's position on the relevant markets.

Action brought on 15 April 2002 by BaByliss SA against the Commission of the European Communities

(Case T-114/02)

(2002/C 144/112)

(Language of the Case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 April 2002 by BaByliss SA, of Montrouge (France), represented by Jacques-Philippe Gunther, lawyer.

The applicant claims that the Court should:

— annul the decision adopted by the Commission on 8 January 2002 in the case of COMP/M.2621 SEB v MOULINEX;

— order the Commission to pay all the costs.

Pleas in law and main arguments

SEB and Moulinex are active in the design, manufacture and sale of domestic electric appliances worldwide. A proposed merger of the two companies was notified to the Commission. The applicant in this case informed the Commission of its reservations in regard to the merger. The Commission none the less declared the transaction compatible with the common

market and with the EEA Agreement, subject to compliance with the undertakings given. The applicant is challenging that decision.

In support of its application the applicant relies first of all on an infringement of essential procedural requirements in accepting the undertakings proposed by SEB late. Undertakings must be submitted within three weeks from notification of a transaction. The Commission allowed SEB to submit new phase one undertakings five weeks after the transaction was notified. The applicant claims that those undertakings could in no circumstances be regarded as enhancing the original undertakings but constituted new undertakings.

Secondly, the applicant claims that the Commission erred in law in deciding to authorise the operation without carrying out an in-depth investigation. The applicant claims that the conditions for authorisation in phase one were not met. The undertakings proposed did not definitively resolve any serious doubts as to the compatibility of the transaction with the common market, as required by the Commission Notice on remedies [1].

Thirdly, the applicant considers that the Commission made a manifest error of assessment in that the undertakings imposed on SEB are insufficient to remove the competition concerns. The Commission therefore authorised the transaction without any undertakings on certain markets where there were serious competition concerns. Moreover, an undertaking to grant a trade mark licence is not by its nature sufficient to resolve the competition concerns that the transaction raises. The period for which the licence is granted is also insufficient for the licensee to switch Moulinex's products to its own brand in a market characterised by strong brand loyalty. Furthermore, the undertaking to supply the German market will have the effect of strengthening SEB/Moulinex's position on that market. Finally, the fact that the Commission agreed to the same trade mark being used by different companies within the European Union is liable to lead to coordinated behaviour by SEB/Moulinex and the licensees.

Fourthly, the applicant considers that the Commission erred in law by failing to examine the extent to which the derisory sum paid and the financial aid provided by the French State was likely to strengthen even further SEB's position on the relevant markets.

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[1] Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98 (text with EEA relevance) (OJ 2001 C 68, p. 3).

Action brought on 12 April 2002 by Avex Inc. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-115/02)

(2002/C 144/113)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 12 April 2002 by Avex Inc., Tokyo (Japan), represented by J. Hofmann, lawyer. Adolf Ahlers AG, Herford (Germany) was an additional party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 11 February 2002 (Case No R 634/2001-1) on the registration of the word/figurative sign 'a' as a Community trade mark;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant seeking Community trade mark:	Avex Inc.
Community trade mark sought:	The figurative mark 'a' for goods in Classes 9, 16, 25, 35 and 41 (*inter alia*, clothing, shoe-related items, shoes and boots) — application no 863142
Proprietor of mark or sign right cited in the opposition proceedings:	Adolf Ahlers AG