

equality of treatment as regards the use of English during the selection procedure, in addition to other alleged defects in the same procedure. The applicant also argues that insufficient reasons were stated for the contested decision.

**Action brought on 14 April 2003 by AES Drax Power Limited against the Commission of the European Communities**

**(Case T-124/03)**

(2003/C 135/59)

*(Language of the case: English)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 14 April 2003 by AES Drax Power Limited, Selby, United Kingdom, represented by K. P. E. Lasok QC and Ms. E. Gibson-Bolton, Solicitor.

The applicant claims that the Court should:

- Order any measures of enquiry necessary to resolve the issues of fact in this case
- Annul the contested decision of 27 November 2002 authorising State Aid NN101/02 to British Energy plc.
- order the defendant to pay the applicant's costs

*Pleas in law and main arguments*

In September 2002 the United Kingdom Government awarded a package of rescue aid to British Energy plc., one of the main producers of electricity in the United Kingdom and a nuclear stations operator. By the contested Decision the defendant decided that this state aid was compatible with the EC Treaty. The applicant, a competitor of British Energy, seeks the annulment of that Decision, contending that the defendant breached its own Guidelines on State Aid for Rescuing and Restructuring firms in difficulty<sup>(1)</sup>. The applicant disputes the defendant's findings that in the absence of the aid in question British Energy would be insolvent and have to cease operating and that if it did so there would be serious consequences both for nuclear safety and for the security of power supply in the United Kingdom. According to the applicant all these

considerations are mistaken, there would be no serious social difficulties if British Energy became insolvent, and the contested Decision is, therefore, in breach of paragraph 23 (c) of the Guidelines. The applicant also claims that the aid in question is not restricted to the amount needed to keep British Energy in business, because if British Energy were placed into administration, as provided for by English insolvency law, the cost of keeping it in business might be smaller. For this reason the applicant considers that the contested Decision is also contrary to paragraph 23(e) of the Guidelines. The applicant further claims that the contested Decision violated paragraph 23 (a) of the Guidelines, by failing to take into account that the contested aid takes the form of cash placed on deposit by the government. According to the applicant these deposits remove the market risk of dealing with British Energy and are therefore not identical to loans or state guarantees of loans provided for in paragraph 23 (a) of the Guidelines. Finally, the applicant contends that the defendant exceeded the limits placed upon the exercise of its discretion by the EC Treaty and the general principles of EC law in failing to take account of the impact of the contested aid on the competitors of British Energy.

<sup>(1)</sup> OJ 1999 No C 288 p. 2.

**Action brought on 14 April 2003 by Reckitt Benckiser (España), S.L. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-126/03)**

(2003/C 135/60)

*(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: English)*

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 14 April 2003 by Reckitt Benckiser (España), S.L., Barcelona, Spain represented by Ms Monica Esteve Sanz, lawyer,

ALADIN Gesellschaft für innovative mikrobiologische Systeme GmbH was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- Declare that the decision of the First Board of Appeals of 31 January 2003 rendered in case 389/2002-1, has infringed Article 4, paragraphs 2 and 3 and/or article 8 paragraph 1, letter b) of Regulation 40/94<sup>(1)</sup>;
- Consequently, altering this decision, declare the dismissal of registration of community trade mark application no. 397.323 ALADIN (word), or — eventually — order the devolution of the case to the First Board of Appeal;
- Order the defendant and if the case might be, the intervener to pay all the costs of these proceedings and the costs of the opposition and appeal incurred within the OHIM.

*Pleas in law and main arguments*

Applicant for Community trade mark: ALADIN Gesellschaft für innovative mikrobiologische Systeme GmbH.

Community trade mark concerned: Word mark 'ALADIN', for certain goods in classes 1, 3, 35, 37 and 42 (application No 397323)

Proprietor of mark or sign cited in the opposition proceedings: RECKITT BENCKISER (ESPAÑA), S.L.

Mark or sign cited in opposition:

Decision of the Opposition Division:

Decision of the Board of Appeal:

Pleas in law:

National mark 'ALADDIN' for certain goods ('polish for metals') in Class 3

Opposition rejected.

Opponent's appeal dismissed.

Misapplication of Article 43 paragraphs 2 and 3 and Article 8 paragraph 1 b) of Regulation 40/94. The applicant challenges the Board of Appeal's ruling that the applicant's trade mark, cited in opposition, had only been used for one particular category of goods ('cotton impregnated with a metal polishing agent for household use') and that, given that use, there was no likelihood of confusion between the two marks. According to the applicant this is not a case where the earlier mark has been used in relation to only part of the goods for which it is registered. The applicant asserts that the earlier mark had been registered for 'polish for metals' and that 'impregnated cotton with a polishing agent' is, in fact, 'polish for metals', meaning that the earlier mark had been used for all the products for which it was registered.

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