

**Order of the Court of First Instance of 19 September 2005
— Air Bourbon v Commission**

(Case T-321/04) ⁽¹⁾

(State aid — Decision to raise no objections — Action for annulment — Time-limit for bringing an action — Publication of a summary notice — Not admissible)

(2005/C 330/56)

Language of the case: French

Parties

Applicant(s): Air Bourbon SAS (Sainte-Marie, island of Réunion, France) (represented by: S. Vaisse, lawyer)

Defendant(s): Commission of the European Communities (represented by: C. Giolito and J. Buendía Sierra, Agents)

Application for

annulment of the Commission Decision (C(2003) 4708 final) of 16 December 2003 to raise no objections against aid N 427/2003 granted by the French authorities to Air Austral

Operative part of the Order

1. *The action is dismissed as inadmissible;*
2. *There is no need to adjudicate on Air Austral's application for leave to intervene;*
3. *The applicant is ordered to pay the costs.*

⁽¹⁾ OJ C 262, 23.10.2004.

Action brought on 26 September 2005 — Anheuser-Busch/OHIM

(Case T-366/05)

(2005/C 330/57)

Language in which the application was lodged: English

Parties

Applicant(s): Anheuser-Busch, Inc. (St. Louis, USA) [represented by: V. von Bomhard, A. Renck, A. Pohlmann, G. Burkhart, lawyers]

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party/parties to the proceedings before the Board of Appeal: Budějovický Budvar, národní podnik (České Budějovice, Czech Republic)

Form of order sought

- Partially annul the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 July 2005 (Case R 514/2004-2), namely insofar as the application was rejected for goods in class 33, and
- Order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'BUDWEISER' for goods in classes 32 and 33 — application No 1 603 489

Proprietor of the mark or sign cited in the opposition proceedings: Budějovický Budvar, národní podnik

Mark or sign cited: The international figurative marks and word mark 'BUDWEISER' and 'BUDWEISER BUDVAR' for goods in classes 31 and 32

Decision of the Opposition Division: Opposition upheld for all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as there is no likelihood of confusion between the conflicting marks. The goods are sufficiently dissimilar to exclude any confusion on the part of the consumer.

Action brought on 19 October 2005 — I.R.I.P.A. Abruzzo v Commission

(Case T-384/05)

(2005/C 330/58)

Language of the case: Italian

Parties

Applicant(s): Istituto Regionale per gli Interventi Promozionali in Agricoltura (Regional Institute for the Promotion of Agriculture) — I.R.I.P.A. Abruzzo (Pescara, Italy) (represented by: Gianluca Belotti, Nicola Pisani and Emanuele Dell' Elce, lawyers)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- annul the Commission's decision set out in its letter of 9 August 2005 and, insofar as necessary, the decision in the Commission's letter of 12 August 2005, and declare that the Commission should award the applicant the grant in issue on the basis that it meets all of the other award criteria;
- order the Commission to pay the costs.

Pleas in law and main arguments

This action is brought against the decision of the Commission of the European Communities of 9 August 2005, received by the applicant on 12 August 2005, informing the applicant that its application for financial assistance under Regulation (EC) No 814/2000 from appropriations in the 2005 budget was not selected on the ground that it was alleged to lack financial capacity.

Contrary to the reasons put forward by the Commission in support of its refusal to grant the application for funding, the applicant submits that its financial capacity and that of its partners in the initiative far exceeded that required by the call for proposals, even on a strict interpretation of the liquidity criterion laid down by the Commission.

Moreover, the applicant submits that this liquidity criterion, as interpreted by the Commission, is clearly illogical and out of proportion to the intended objectives, and thus artificially limits the number of prospective candidates. In this regard, the applicant maintains that the condition of financial capacity was fully met in that its liquidity far exceeded 100 % of the total grant applied for (EUR 263 895,50) and that, during each of the three financial years for which the balance sheets and annual accounts were approved and closed, the applicant's liquidity and that of its partners clearly exceeded this figure.

**Action brought on 21 October 2005 — Transn utica/
Commission**

(Case T-385/05)

(2005/C 330/59)

Language of the case: English

Parties

Applicant(s): Transn utica — Transportes e Navega o, SA (Matosinhos, Portugal) [represented by: C. Fern andez Vici en, I. Moreno-Tapia, D. Ortig o Ramos, B. Aniceto Silva, lawyers]

Defendant(s): Commission of the European Communities

Form of order sought

- Annul in its entirety the Decision of the Commission of 6 July 2005 (process REM 05/2004) regarding a procedure of remission and repayment of customs duties;
- order the Commission to pay the costs generated by this procedure.

Pleas in law and main arguments

The applicant is a Portuguese company, primarily engaged in freight transportation. In 1994 another Portuguese company dispatched a certain number of consignments of tobacco and ethyl alcohol from Portugal to countries then outside the Community under the external Community transit procedure. The applicant was named as principal, in the terms of Article 96 of the Community Customs Code ('CCC'), for these consignments. It was later revealed that, in fact, the applicant's management was fully unaware of these transactions, as one of its employees had been acting fraudulently, using the applicant's guarantee certificate in violation of internal instructions.

Because there was no evidence that the consignments in question had reached the customs office of their destination, the applicant, as principal, was requested to pay the relevant customs debts. The applicant later applied under Article 239 CCC for the repayment and remission of these debts, alleging that, being unaware of the unauthorised activities of its employee, it was not involved in any fraudulent activities and had collaborated with the authorities and that, further, the Portuguese customs authorities had never informed it about their suspicions of fraud in relation to the transactions in question. This application was rejected by the contested Decision.

In support of its application, the applicant contends that the Commission infringed essential procedural requirements, as it failed to consult the Customs committee and only requested the applicant to intervene in the procedure at a very late stage. The applicant also invokes an alleged manifest error of assessment by the Commission of the facts in question, as well as an infringement of the Commission's duty to state reasons for its decisions. The applicant further refers to alleged infringements of the principle of good administration and its rights of defence on the grounds that the Commission has failed to examine carefully and impartially all relevant aspects of the case. Finally, the applicant invokes an alleged infringement of the principle of proportionality, since its application was rejected even though the Commission and the Portuguese authorities had started an investigation to discover whether the operations in question constituted smuggling.