3. Third plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity as there is no differentiation between economic operators who are in a comparable factual and legal position as regards the objective pursued

   The applicant submits in this connection inter alia that the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty benefits all taxable undertakings and does not favour either particular areas of business and sectors or undertakings of a particular size.

4. Fourth plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity due to justification on the basis of the nature and general scheme of the tax system

   The applicant submits in that regard, that the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty is based on tax system specific reasons which comply with principles of constitutional law, such as taxation according to ability to pay, the prevention of excessive taxation and respect for the principle of proportionality.

5. Fifth plea in law, alleging infringement of Article 107(1) TFEU: Manifest errors of assessment on the basis of insufficient consideration of the position under German tax law

   The applicant submits in that regard, that the Commission failed to have regard to the provisions of German tax law on deduction of losses.

6. Sixth plea in law, alleging that there is a legitimate expectation under EU law

   The applicant submits in this connection that the tax privileges in question upon acquisitions of interests together with deductions of losses were raised by the Commission for the first time in a formal investigation procedure and that this is an extraordinary situation as the question whether a measure may constitute State aid could only arise on the basis of a legal simplification of a provision (Paragraph 8(4) of the KStG) which is undisputedly in conformity with the provisions on State aid. The relevance to State aid of that simplification of the law was not discernible to either the German legislature or undertakings which had been competently advised.

Action brought on 1 December 2011 — Spa Monopole v OHIM — South Pacific Management (Manea Spa)

(Case T-611/11)

(2012/C 32/69)

Language in which the application was lodged: French

Parties

Applicant: Spa Monopole, compagnie fermière de Spa SA/NV (Spa, Belgium) (represented by: L. De Brouwer, E. Cornu and E. De Gryse, lawyers)

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

Other party to the proceedings before the Board of Appeal: South Pacific Management (Papeete, Polynesia)

Form of order sought

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 (Trade Marks and Designs) of 8 September 2011 in Joined Cases R 1776/2010-1 and 1886/2010-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: South Pacific Management.

Community trade mark concerned: word mark 'Manea Spa' for goods and services in Classes 3, 24, 25, 43 and 44.

Proprietor of the mark or sign cited in the opposition proceedings: the applicant.

Mark or sign cited in opposition: Benelux registrations of the word marks 'SPA' and 'Les Thermes de Spa' for goods and services in Classes 3, 32 and 42 (now Class 44).

Decision of the Opposition Division: partial rejection of the opposition.

Decision of the Board of Appeal: dismissal of the applicant's appeal.

Pleas in law: Breach of Article 8(1)(b) of Regulation No 207/2009 in the assessment of the similarity of the marks at issue and as regards the assessment of the importance of the distinctive character acquired by use of the mark 'SPA' and of the likelihood of confusion, as well as breach of Article 8(5) of Regulation No 207/2009 as regards the assessment of the reputation of the marks 'SPA' and 'Les Thermes de Spa'.

Action brought on 2 December 2011 — Treofan Holdings and Treofan Germany v Commission

(Case T-612/11)

(2012/C 32/70)

Language of the case: German

Parties

Applicants: Treofan Holdings GmbH (Raunheim, Germany) and Treofan Germany GmbH & Co. KG (represented by: J. de Weerth, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 26 January 2011, C(2011) 275, as corrected by C(2011) 2608, in the procedure on State aid C 7/2010 (ex CP 250/2009 and NN 5/2010) implemented by Germany 'KStG, Sanierungsklausel' ('Law on corporation tax, provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty');

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies in essence on the following pleas in law:

1. First plea in law, alleging infringement of Article 107(1) TFEU: the deduction of losses is not an aid granted through State resources

   With regard to this plea, the applicants submit inter alia, that the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty does not confer a financial advantage, but rather maintains a company's already existing financial position in the form of the carry forward of losses. The applicants therefore take the view that there is no financing through State resources.

2. Second plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity in the absence of an exception to the relevant reference system

   The applicants submit in that regard that the relevant reference system is the general rules on the deduction of losses for corporations (Paragraph 10d of the German Law on Income Tax in conjunction with Paragraph 8(1) of the KStG and Paragraph 10a of the German Law on Trade Tax) and that the limitation by Paragraph 8c of the KStG is merely an exception to that relevant reference system, which is in turn limited inter alia by the provision enabling the fiscal carry forward of losses as a partial exception to that exception.

3. Third plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity as there is no differentiation between economic operators who are in a comparable factual and legal position as regards the objective pursued

   The applicants submit in this connection inter alia that the provision enabling the fiscal carry forward of losses benefits all taxable undertakings and does not favour either particular areas of business and sectors or undertakings of a particular size.

4. Fourth plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity due to justification on the basis of the nature and general scheme of the tax system

   The applicants submit in that regard that the provision enabling the fiscal carry forward of losses is based on tax system specific reasons which comply with principles of constitutional law, such as taxation according to ability to pay, the prevention of excessive taxation and respect for the principle of proportionality.

5. Fifth plea in law, alleging infringement of Article 107(1) TFEU: Manifest errors of assessment on the basis of insufficient consideration of the position under German tax law

   The applicants submit in that regard that the Commission failed to have regard to the provisions of German tax law on deduction of losses.

6. Sixth plea in law, alleging that there is a legitimate expectation under EU law

   The applicants submit in this connection inter alia that the tax privileges in question upon acquisitions of interests together with deductions of losses were raised by the Commission for the first time in a formal investigation procedure and that this is an extraordinary situation, which is not discernible to the legislature, tax courts and the tax authorities and therefore is also not discernible to undertakings even if they have been thoroughly and competently advised.

Action brought on 5 December 2011 — VMS Deutschland v Commission

(Case T-613/11)

(2012/C 32/71)

Language of the case: German

Parties

Applicant: VMS Deutschland Holdings GmbH (Darmstadt, Germany) (represented by: D. Pohl, G. Burwitz, M. Maier and P. Werner, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission of 26 January 2011, C(2011) 275 final, in the procedure on State aid C 7/2010 'KStG, Sanierungsklausel' ('Law on corporation tax, provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty');

— order the defendant to pay the costs.