

**Form of order sought**

- annulment of the decision of the First Board of Appeal of OHIM of 6 September 2007 in Case R 290/2007-1, in so far as it refused the registration of the Community trade mark No 5 225 776 in respect of goods and services claimed in Classes 9, 35, 36, 38 and 42;
- registration of the Community trade mark No 5 225 776 in respect of all the goods and services claimed.

**Pleas in law and main arguments**

*Community trade mark concerned:* Figurative mark comprising a representation of a hand holding a card followed by three black triangles for goods and services in Classes 9, 35, 36, 38 and 42 (Application No 5 225 776)

*Decision of the Examiner:* Partial refusal to register

*Decision of the Board of Appeal:* Dismissal of the appeal

*Pleas in law:* The applicant states that, contrary to the finding of the Board of Appeal of OHIM in the contested decision, the elements comprising the trade mark, the registration of which was partially refused, are distinctive and arbitrary in respect of the goods and services claimed and, consequently, their combination must be also considered to be distinctive and arbitrary.

**Action brought on 22 November 2007 — Deutsche Post v Commission**

(Case T-421/07)

(2008/C 22/86)

*Language of the case:* German

**Parties**

*Applicant:* Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund and T. Lübbig, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul the decision of the Commission of the European Communities of 12 September 2007 'State aid C 36/07 (ex NN 25/07) — State aid to Deutsche Post AG, invitation to submit comments pursuant to Article 88(2) of the EC Treaty';
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant seeks the annulment of the decision of the Commission to institute the proceedings under Article 88(2) EC with regard to State aid C 26/07 (ex NN 25/07). That decision was notified to Germany by letter of 12 September 2007

(OJ 2007 C 245, p. 21). The proceedings begun by that decision are intended as a supplementary investigation into the proceedings which were instituted on 23 October 1999 by the Commission and in which the Commission issued a negative decision on 19 June 2002 (OJ 2002 L 247, p 27). In that negative decision, the Commission found that Deutsche Post's prices for its Haus-zu-Haus-Paketdienst (house to house parcel service) were below the service-specific supplementary costs and that that aggressive discount policy was not part of its public supply obligations.

In support of its claim, the applicant submits that the contested decision infringes basic procedural principles. In particular, there is an infringement of the principle of the protection of legitimate expectations, since the Commission had for years been aware of the predominant facts of the case and on 19 June 2002 issued a final decision relating thereto. In addition, the right of the Federal Republic of Germany and the applicant to participate has been infringed in that they were not given the opportunity to take a position on the contested decision before it was issued. Finally, it is submitted in that regard that there is a breach of Regulation (EC) No 659/1999<sup>(1)</sup>, since it follows from the scheme of that provision that a negative decision, such as that of 19 June 2002, is final and that the defendant cannot make facts which are subject to a final ruling the subject-matter of a renewed aid verification procedure.

Further, the applicant submits that the defendant has infringed the duty to state reasons under Article 253 EC and Article 6(1) of Regulation No 659/1999, since the contested decision does not make it clear which measures the Commission seeks to classify as State aid and, moreover, the decision contains no legal description.

Finally, it is alleged that there is an infringement of Article 87(1) EC and Article 88 EC, since the measures referred to in the contested decision ought not to be classified as State aid.

<sup>(1)</sup> Council Decision (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1).

**Action brought on 16 November 2007 — Agencja Wydawnicza Technopol v OHIM (100)**

(Case T-425/07)

(2008/C 22/87)

*Language of the case:* Polish

**Parties**

*Applicant:* Agencja Wydawnicza Technopol sp. z o.o. (Częstochowa, Poland) (represented by D. Rządewska, legal adviser)