

3. Third plea in law (in the alternative): Failure to exercise discretion and disproportionality

- The decision on the recovery of the financial assistance which has been awarded was taken by the defendant on the erroneous assumption that it was subject to a binding recommendation of the European Anti-Fraud Office (OLAF) on the recovery. This is a failure to exercise discretion on the part of the defendant with the result that the recovery is unlawful.
- The recovery of the total partial sum of EUR 643 627,27 is, moreover, unlawful due to the infringement of the principle of proportionality under Article 5(4) TEU. It goes beyond what is necessary to protect the financial budget and, in particular in the light of the assistance project being successfully carried out, would not be proportionate to the applicant's burden.

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**Action brought on 31 May 2017 — Shenzhen Jiayz Photo Industrial v EUIPO — Seven (sevenoak)**

**(Case T-339/17)**

(2017/C 239/72)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Shenzhen Jiayz Photo Industrial Ltd (Shenzhen, China) (represented by: M. de Arpe Tejero, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Seven SpA (Leini, Italy)

**Details of the proceedings before EUIPO**

*Applicant of the trade mark at issue:* Applicant

*Trade mark at issue:* EU figurative mark containing the word element 'SEVENOAK' — Application for registration No 13 521 125

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 23 March 2017 in Case R 1326/2016-1

**Form of order sought**

The applicant claims that the Court should:

- reject the contested decision;
- grant the EUTM application No 13 521 125 'SEVENOAK' for all the goods included in the application;
- order EUIPO to bear the costs of the proceedings.

**Plea in law**

- Infringement of Article 8(1) (b) Regulation No 207/2009.

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**Action brought on 30 May 2017 — Japan Airlines v Commission**

**(Case T-340/17)**

(2017/C 239/73)

*Language of the case: English*

**Parties**

*Applicant:* Japan Airlines Co. Ltd (Tokyo, Japon) (represented by: J.-F. Bellis and K. Van Hove, lawyers, and R. Burton, Solicitor)