

**Action brought on 1 September 2009 — Amecke Fruchtsaft v OHIM — Beate Uhse (69 Sex up)**

(Case T-343/09)

(2009/C 267/134)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Amecke Fruchtsaft GmbH & Co. KG (Menden, Germany) (represented by: R. Kaase and J.-C. Plate)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Beate Uhse Einzelhandels GmbH

**Form of order sought**

- Declare admissible the action brought against the decision of the First Board of Appeal of OHIM of 11 June 2009 in Case R 1728/2008-1;
- Annul the contested decision on the ground of infringement of Article 8(1)(b) of Regulation (EC) No 207/2009; <sup>(1)</sup>
- Order the defendant to pay the costs, including the costs of the opposition and the appeal.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Beate Uhse Einzelhandels GmbH.

*Community trade mark concerned:* the word mark “69 Sex up” for goods and services in Classes 32 and 41 (Application No 5 274 303).

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

*Mark or sign cited in opposition:* German word mark “sex:h:up” for goods in classes 5, 29, 30 and 32 (No 30 531 669), although the opposition was directed solely against the registration for goods in class 32.

*Decision of the Opposition Division:* allow the opposition

*Decision of the Board of Appeal:* annulment of the contested decision and dismissal of the opposition.

*Pleas in law:* infringement of Article 8(1)(b) of Regulation No 207/2009 in that there is a likelihood of confusion between the two marks.

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<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

**Action brought on 31 August 2009 — Germany v Commission**

(Case T-347/09)

(2009/C 267/135)

*Language of the case: German*

**Parties**

*Applicant:* Federal Republic of Germany (represented by: M. Lumma and B. Klein)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Declare Commission Decision SG-Greffe (2009) D/3985 on State aid No NN 8/2009 of 2 July 2009 null and void, to the extent that the measures notified are categorised as State aid within the meaning of Article 87(1) EC;
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant challenges Commission Decision K(2009) 5080, definitive since 2 July 2009, concerning aid rules which consist of, first, the free transfer of federally-owned national nature reserves and, second, support for large conservation projects (State aid NN 8/21009 — Germany — Conservation areas). In that decision, the Commission takes the view that the aid rules notified are compatible with the common market under Article 86(2) EC. The applicant challenges the contested decision, to the extent that the measures notified are categorised as State aid within the meaning of Article 87(1) EC.

As the basis of its action, the applicant claims that the defendant incorrectly applied Article 87(1) EC in a number of respects. In that regard, it is submitted, inter alia, that the defendant wrongly categorises conservation organisations as undertakings and wrongly failed to carry out the necessary overall assessment of the measures referred to. Furthermore, the conservation organisations have obtained no material advantage for State aid purposes from the measures referred to. The applicant further complains of an incorrect application of the fourth criterion laid down by the Court of Justice in Case C-280/00 *Altmark Trans und Regierungspräsidium Magdeburg* [2003] ECR I-7747.

In the alternative, a breach of the duty to state reasons laid down in Article 253 EC is claimed.

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**Action brought on 3 September 2009 — PAGO International v OHIM — Tirol Milch (Pago)**

(Case T-349/09)

(2009/C 267/136)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* PAGO International GmbH (Klagenfurt, Austria) (represented by: C. Hauer and C. Schumacher, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Tirol Milch reg.Gen.mbH Innsbruck (Innsbruck, Austria)

**Form of order sought**

— Amend the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 July 2009 concerning cancellation proceedings No 2025 C (Community trade mark No 915 488) so as to dismiss the appeal by Tirol Milch registrierte Genossenschaft mit beschränkter Haftung against the decision of the Cancellation Division of 4 August 2008, and order Tirol Milch registrierte Genossenschaft mit beschränkter Haftung to pay the costs of the appeal proceedings;

— in the alternative, annul the decision of the Fourth Board of Appeal and refer the case back to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) for a fresh decision.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The coloured figurative mark 'Pago' for goods in Class 32 (Community trade mark No 915 488)

*Proprietor of the Community trade mark:* The applicant

*Applicant for the declaration of invalidity:* Tirol Milch registrierte Genossenschaft mit beschränkter Haftung

*Decision of the Cancellation Division:* Revocation in part of the Community trade mark

*Decision of the Board of Appeal:* Annulment in part of the decision of the Cancellation Division and revocation of the Community trade mark

Pleas in law:

— Infringement of Article 51 in conjunction with Article 15(1)(a) of Regulation (EC) No 207/2009, <sup>(1)</sup> inasmuch as it was incorrectly deemed not to have been proved that the trade mark at issue in the proceedings had been used in such a way as to preserve the rights of the proprietor;

— Infringement of Article 75 of Regulation No 207/2009 and of fundamental Community rights, in particular the right to a fair hearing.

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<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

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**Action brought on 4 September 2009 — ICO Satellite v Commission**

(Case T-350/09)

(2009/C 267/137)

*Language of the case: English*

**Parties**

*Applicant:* ICO Satellite Ltd (Slough, United Kingdom) (represented by: S. Tupper, Solicitor)

*Defendant:* Commission of the European Communities