

The applicant asserts that the decision refusing his application is contrary to Article 5(2) of Annex VII, since the conditions for granting an installation allowance are fulfilled, and that the European Parliament cannot validly rely on the ground of exclusion laid down in Article 5(4) of Annex VII.

Action brought on 30 January 2002 by Audi AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-16/02)

(2002/C 97/25)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 30 January 2002 by Audi AG, of Ingolstadt (Germany), represented by L. von Zumbusch, lawyer.

The applicant claims that the Court should:

- annul the decision adopted on 8 November 2001 by the First Board of Appeal in appeal No R 0652/2000-1;
- order the defendant Office to pay the costs.

Pleas in law and main arguments

The trade mark concerned: the verbal mark 'TDI' — application No 19752

Goods or services: goods and services in Classes 12 and 37 (vehicles and constructive parts thereof; repair and maintenance of vehicles)

Decision contested before the Board of Appeal: refusal of registration by the examiner

Decision of the Board of Appeal: rejection of the appeal

- Grounds of claim:
- incorrect application of the provisions of Regulation (EC) No 40/94⁽¹⁾ and of Regulation (EC) No 2868/95⁽²⁾;
 - incorrect application of Article 7(1)(b) and (c) of Regulation (EC) No 40/94;
 - incorrect application of Article 7(3) of Regulation (EC) No 40/94.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark (OJ 1994 L 11, p. 1).

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 29 January 2002 by Fred Olsen S.A. against Commission of the European Communities

(Case T-17/02)

(2002/C 97/26)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 January 2002 by Fred Olsen S.A., whose registered office is in Santa Cruz de Tenerife (Spain), represented by Rafael Marín Correa, lawyer.

The applicant claims that the Court should:

- annul the decision of the Commission of 25 July 2001
- order the Commission of the European Communities to initiate the procedure for verifying whether aid is compatible with the EC Treaty in accordance with its judgment;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, a Spanish maritime company which, although the majority of its shares are held in the Netherlands, has for a long time been operating a number of sea routes between the islands of the Canaries archipelago, is challenging the Commission decision

- (a) not to contest the payment to Transmediterránea S.A. of PTA 15 560 625 000 intended to make up for the losses arising from the provision of cabotage services during 1997 and, secondly, to settle the rights and obligations of the State directly linked to the public service contract entered into in 1977 between Transmediterránea and the Spanish State and,
- (b) not to raise any objection whatever to the aid valued at PTA 1 650 000 000 paid to Transmediterránea in the form of public service compensation for the maritime cabotage services provided by that company in the Canaries archipelago during 1998.

As regards the first aspect, that is to say the amounts paid to Transmediterránea in the form of settling accounts for 1997 and final settlement of the contract which the Commission accepts because it deems such payments existing aid — prior to the accession of Spain — in that they arise directly from the implementation of the contract entered into in 1977, the applicant claims that the contested decision is vitiated by an error of assessment inasmuch as it allows:

- certain expenditure relating to staff reduction to be charged to the accounts for 1997 and for final settlement; and
- payment of the entire amount by way of final settlement without charging the debts to the financial years in which they may have arisen and without offsetting them with any surpluses.

As regards the second aspect, that is to say the aid granted in the form of compensation for the routes provided in the Canaries during 1998, which the Commission classifies as new aid, the applicant alleges that the contested decision:

- infringes Article 88 of the EC Treaty, since the competent Spanish authority, by granting the aid, has failed to fulfil its obligations under the recommendation, drawn up by the Commission pursuant to the aforementioned article, on the upkeep and maintenance of the system of aid applicable to Transmediterránea.

— infringes Article 86(2) of the EC Treaty and general communications on services in the general interest and those specifically concerning aid to maritime transport by considering, in blatant contradiction to those provisions, that the aid is compatible with Article 86(2). The applicant would point out in that respect that:

- (a) there is no act emanating from the public authorities defining the content of services in the general interest and recommending Transmediterránea to provide them;
- (b) it was not necessary to declare Canary routes as being in the general interest; and
- (c) the routes were not awarded by means of an open tender procedure.

Action brought on 8 February 2002 by Daiichi Pharmaceutical Co. Ltd. against the Commission of the European Communities

(Case T-26/02)

(2002/C 97/27)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8th February 2002 by Daiichi Pharmaceutical Co. Ltd., represented by Mr Jacques Buhart and Mr Pierre-M. Louis of Coudert Brothers LLP, Brussels (Belgium).

The applicant claims that the Court should:

- annul Article 3 (f) of the Commission Decision of 21 November 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No. COMP/E-1/37,512 — Vitamins);
- alternatively, substantially decrease the fine levied on the applicant; and
- order the Commission to pay the costs.