

- Article 185(2)(b) of the WIB 1992 and the excess profit exemption system arising out of it are open to all undertakings in a comparable factual and legal situation and which conduct the economic transactions that form the subject matter of the contested measure. The contested measure is therefore not restricted to specific undertakings that can be defined on the basis of particular features, and is thus not selective for the purposes of Article 107(1) TFEU.
 - In the alternative, the Commission committed a manifest error of assessment in finding that the exemption of excess profit did not form part of the reference system. The exemption of excess profit on the basis of synergies and economies of scale in application of the arm's length principle is an integral component of the provisions that determine total taxable income, and thus cannot be regarded as constituting a derogation from the reference system that leads to selectivity.
 - In the further alternative, the Commission is unable to prove that the arm's length principle was incorrectly applied by the Belgische Rulingcommissie (Belgian Tax Ruling Committee) in the context of the application of Article 185(2) (b) of the WIB 1992. The Commission's reasoning is not coherent and takes into account important factors which are, however, contradictory or lack the requisite coherence.
4. Fourth plea in law, alleging breach of the principle of legal certainty in imposing an obligation to recover.
- On the basis of the well-established line of decisions of the Commission that did not call into question the application of the internationally recognised arm's length principle, it would be at variance with the principle of legal certainty if an order for the recovery of the alleged aid were to be applied in the present case. On the basis of the existing line of decisions and case-law, it could not, in any event, have been foreseen that Article 185(2)(b) of the WIB would be contrary to Article 107 TFEU.

⁽¹⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Action brought on 22 June 2016 — Versace 19.69 Abbigliamento Sportivo v EUIPO — Gianni Versace (VERSACE 19.69 ABBIGLIAMENTO SPORTIVO)

(Case T-336/16)

(2016/C 296/45)

Language in which the application was lodged: Italian

Parties

Applicant: Versace 19.69 Abbigliamento Sportivo Srl (Busto Arsizio, Italy) (represented by: F. Caricato, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gianni Versace SpA (Milan, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark containing the word elements 'VERSACE 19.69 ABBIGLIAMENTO SPORTIVO' — Application for registration No 11 992 435

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2016 in Case R 1005/2015-1

Form of order sought

The applicant claims that the Court should:

- uphold the present action;
- annul the contested decision and, consequently, register mark No 11 992 435 in respect of all the goods claimed, without prejudice to those already granted;
- order the other party to pay the costs.

Plea in law

- The applicant maintains that the decision of 6 April 2016 is vitiated by the scant examination of the evidence demonstrating insufficient use of the marks activated by the other party, and by the failure to examine carefully the likelihood of confusion between the marks and the goods in question in the light of all the relevant factors.

Action brought on 22 June 2016 — Versace 19.69 Abbigliamento Sportivo v EUIPO — Gianni Versace (VERSACCINO)
(Case T-337/16)
(2016/C 296/46)

Language in which the application was lodged: Italian

Parties

Applicant: Versace 19.69 Abbigliamento Sportivo Srl (Busto Arsizio, Italy) (represented by: F. Caricato, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gianni Versace SpA (Milan, Italy)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: European Union figurative mark containing the word element 'VERSACCINO' — Application for registration No 11 957 685

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 6 April 2016 in Case R 1172/2015-1

Form of order sought

The applicant claims that the Court should:

- uphold the present action;