— Erroneous interpretation of Regulation No 207/2009 in evaluating the likelihood of confusion amongst the signs in comparison.

Action brought on 3 December 2015 — BikeWorld v Commission

(Case T-702/15)

(2016/C 068/39)

Language of the case: German

Parties

Applicant: BikeWorld GmbH (St. Ingbert, Germany) (represented by: J. Jovy, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 1 October 2014 in so far as it concerns the applicant;

— suspend the enforcement of the decision vis-à-vis the applicant until the present action has been decided on (Article 278 TFEU).

Pleas in law and main arguments

By the present action, the applicant seeks the annulment in part of Commission Decision C(2014) 3634 final of 1 October 2014 on German State aid granted to the Nürburgring (SA.31550 (2012/C) (ex 2012/NN)).

In support of the action, the applicant relies, in essence, on the following:

1. The applicant is no longer identical to the party to the proceedings in which the decision was adopted. No proceedings could therefore be brought against it.

2. The applicant was not a party to the proceedings that led to the adoption of the contested decision. Its right to a fair hearing was therefore not respected.

3. The applicant's current shareholders are not remotely connected to the original shareholders/owners at the time that the loans were granted.

4. The objective 'to prevent particular competitive advantages' sought by the recovery cannot be attained by the decision, for the applicant has not been in competition with anyone and that has been the case since the last loan was granted.

5. The applicant has already agreed to its liquidation and winding-up, should that prove necessary, in order to avoid imminent insolvency, which would not be avoidable, if it had to make any payment on the basis of the recovery of State aid.

Action brought on 28 November 2015 — Micula e.a. v Commission

(Case T-704/15)

(2016/C 068/40)

Language of the case: English

Parties

Applicants: Viorel Micula (Oradea, Romania), European Drinks SA (Ștei, Romania), Rieni Drinks SA (Rieni, Romania), Transilvania General Import-Export SRL (Oradea), West Leasing International SRL (Pantasesti, Romania) (represented by: J. Derenne, A. Dashwood, D. Vallindas, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision (EU) 2015/1470 of 30 March 2015 on State aid SA.38517 (2014/C) (ex 2014/NN) implemented by Romania [Arbitral award Micula v Romania of 11 December 2013 (notified under document C(2015) 2112)] (OJ 2015 L 232, p. 43);

— alternatively, annul the contested decision insofar as

i. it identifies Viorel Micula as an 'undertaking', and therefore part of the alleged single economic unit constituting the beneficiary of the aid,

ii. identifies the beneficiary of the aid as a single economic unit comprising Viorel Micula, Ioan Micula, S.C. European Food SA, S.C. Starmill S.R.L., S.C. Multipack, European Drinks SA, Rieni Drinks SA, Scandic Distilleries SA, Transilvania General Import-Export SRL, and

iii. orders, at Article 2(2), that Viorel Micula, Ioan Micula, S.C. European Food SA, S.C. Starmill S.R.L., S.C. Multipack, European Drinks SA, Rieni Drinks SA, Scandic Distilleries SA, Transilvania General Import-Export SRL, and West Leasing SRL shall be jointly liable to repay the State aid received by any one of them;

— order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on eight pleas in law.

1. First plea in law, alleging a lack of competence and misuse of powers. By its mischaracterisation of the execution of the ICSID arbitral award (the 'Award') as the granting of State aid within the meaning of Article 107(1) TFEU, the Commission is effectively asserting powers, which it enjoys in relation to State aid granted by Romania following that country's accession to the EU, retrospectively to the pre-accession period. The Commission manifestly lacks competence to use its State aid powers in this way. The adoption of a decision having such purpose and effect further entails the misuse of those powers.

2. Second plea in law, alleging a violation of Article 107(1) TFEU

— First, the decision does not demonstrate the existence of an economic advantage as it identifies the execution/implementation of the Award as the incompatible aid. The present case meets the conditions of the Asteris case-law (judgment of 27 September 1988 in Asteris and Others, 106/87 to 120/87). Any advantage (quod non) pre-dates Romania's accession to the EU and is thus outside the scope of EU State aid rules. Second, the decision does not demonstrate the existence of selectivity. The Bilateral Investment Treaty Romania-Sweden ('BIT' — the legal basis of the Award) establishes a system of general liability that is equally applicable to any investor. Third, the decision does not demonstrate that the measure in question is imputable to the Romanian State. Romania has no margin of appreciation to execute the Award.

3. Third plea in law, alleging a violation of Article 351 TFEU and general principles of law. Article 351 TFEU protects the obligations incurred by Romania through the execution of the BIT with Sweden, while it was still an agreement between a Member State (Sweden) and a third country (Romania), against any possible post-accession effects of the EU State aid rules.

4. Fourth plea in law, alleging a violation of the principle of the protection of legitimate expectations. The EU authorities actively encouraged the conclusion of BITs, and consequently caused to entertain a legitimate expectation that an effort to enforce such a BIT through arbitration would not be blocked e.g. under State aid rules.

5. Fifth plea in law, alleging in the alternative, that the alleged aid should be considered as compatible aid. The national measure in question which was at the origin of the arbitration and the Award was never the subject of a definitive finding of incompatibility. In any event, it would have been compatible with EU State aid rules.

6. Sixth plea in law, alleging, in the alternative, that the decision incorrectly determines the beneficiaries of the alleged aid. The decision does not demonstrate either that Viorel and Ioan Micula form part of the alleged single economic unit, or that there is a single economic unit in this case.

7. Seventh plea in law, alleging errors in the recovery ordered by the decision. As the decision incorrectly determines the beneficiaries of the alleged aid, it orders the recovery from individuals and companies which are not beneficiaries of the alleged aid.

8. Eighth plea in law, alleging a violation of an essential procedural requirement (right to be heard). The decision opening the formal investigation procedure did not mention at any point the applicants European Drinks, Rieni Drinks, West Leasing and Transilvania General Import-Export.

Action brought on 9 December 2015 — BASF v OHIM — Evonik Industries (DINCH)

(Case T-721/15)

(2016/C 068/41)

Language in which the application was lodged: German

Parties

Applicant: BASF SE (Ludwigshafen am Rhein, Germany) (represented by: A. Schulz and C. Onken, lawyers)

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

Other party to the proceedings before the Board of Appeal: Evonik Industries AG (Marl, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: The applicant

Trade mark at issue: Community word mark 'DINCH' — Community trade mark No 2 563 856

Procedure before OHIM: Invalidity proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 23 September 2015 in Case R 2080/2014-1

Form of order sought

The applicant claims that the Court should:

— amend the contested decision to the effect that the appeal of the other party before the Board of Appeal be dismissed;

— in the alternative, annul the contested decision;

— order OHIM to pay the costs.