

Operative part

The Court:

1. Annuls the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of 27 September 2004 (Case R 328/2003-2);
2. Orders OHIM to bear its own costs and those incurred by Advance Magazine Publishers, Inc.

Order of the President of the Court of First Instance of 11 October 2007 — MB Immobilien v Commission

(Case T-120/07 R)

Interim measures — State Aid to the new Länder — Obligation to recover aid —
Application for suspension of operation of a measure — Urgency —
Balancing of interests

1. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Burden of proof — Financial loss — Situation which could jeopardise the existence of the applicant company — Assessment having regard to the company's group situation — Control held by a natural person not a legal person — Not relevant (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2)) (see paras 33-38)*
2. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests involved — Commission decision ordering recovery of State aid (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2)) (see paras 45, 46)*

Re:

APPLICATION for suspension of operation of Commission Decision 2007/492/EC of 24 January 2007 on State Aid No C 38/2005 (ex NN 52/2004) implemented by Germany for the Biria-Gruppe (OJ 2007 L 183, p. 27).

Operative part

1. The application for interim measures is dismissed;
2. Costs are reserved.

**Order of the Court of First Instance (Third Chamber) of 17 October 2007 —
Sumitomo Chemical Agro Europe and Philagro France v Commission
(Case T-454/05)**

Plant protection products — Active substance procymidone — Directive 91/414/EEC — Action for annulment — Action for failure to act — No need to adjudicate — Action for damages — Inadmissibility — Action manifestly unfounded

1. *Actions for annulment — Lack of jurisdiction of the Community Courts (Art. 230 EC) (see para. 53)*
2. *Actions for damages — Independent of actions for annulment and for failure to act (Arts 230 EC, 235 EC and 288, second para., EC) (see paras 70-72)*
3. *Actions for damages — Commission taking a provisional position in the procedure for entering an active substance of a plant protection product in Annex I to Directive 91/414 (Art. 288, second para., EC; Council Directive No 91/414) (see paras 73, 77-81)*