

4. *State aid — Commission decision finding non-notified aid to be incompatible with the common market — Duty to state reasons — Information required (Art. 253 EC) (see paras 63-64)*

Re

APPLICATION for the annulment of Commission Decision C(2004) 471 final of 16 March 2004 concerning the aid scheme which Italy is planning to implement in favour of processing and marketing cooperatives in order to compensate the damage caused by ovine catarrhal fever (blue tongue) (Article 5 of Law No 22 of the Region of Sardinia of 17 November 2000)

Operative part

The Court:

1. Dismisses the application;
2. Orders the applicant to pay the costs.

Judgment of the Court of First Instance (Third Chamber) of 15 December 2005 — BIC v OHIM (Shape of an electronic lighter)

(Case T-263/04)

Community trade mark — Three-dimensional trade mark in the shape of an electronic lighter — Absolute ground for refusal — Distinctive character — Article 7 (1)(b) of Regulation (EC) No 40/94 — Distinctive character acquired through use — Article 7(3) of Regulation (EC) No 40/94

1. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive*

character — Three-dimensional mark — Shape of an electronic lighter (Council Regulation No 40/94, Art. 7(1)(b)) (see para. 34)

2. *Community trade mark — Definition and acquisition of the Community trade mark — Absolute grounds for refusal — Marks devoid of any distinctive character — Exception — Acquisition through use — Criteria for assessment (Council Regulation No 40/94, Art. 7(3)) (see paras 61-66)*

Re

ACTION for the annulment of the decision of the Fourth Chamber of the Board of Appeal of OHIM of 6 April 2004 (Case R 469/2003-4), in relation to the registration as a Community trade mark of a three-dimensional trade mark in the shape of an electronic lighter.

Information relating to the case

Applicant for the Community trade mark:	BIC SA
Community trade mark sought:	Three-dimensional mark in the shape of a lighter
Decision of the examiner:	Refusal to register
Decision of the Board of Appeal:	Dismissal of the appeal

Operative part

The Court:

1. Dismisses the action;
2. Orders the applicant to pay the costs.