dismissed the action for annulment brought against the decision of the Fourth Board of Appeal of OHIM of 25 July 2008, dismissing the appeal against the examiner's decision refusing in part registration of the figurative sign representing the headstock of a guitar coloured silver, grey and brown as a Community trade mark for certain goods in Classes 9 to 15 — Distinctiveness of a figurative sign consisting of the two-dimensional representation of part of the product.

Operative part

1. The appeal is dismissed.

2. Mr Wilfer is ordered to pay the costs.

Judgment of the Court (Sixth Chamber) of 15 September 2011 — Germany v Commission

(Case C-544/09 P)

(Appeal — State aid — Introduction of digital terrestrial television in the Berlin-Brandenburg region — Article 87(3)(c) EC — Market failure — Proportionality — Technological neutrality — Incentive effect)

1. State aid — Compatibility of aid with the common market — Aid bringing about improvement in the financial situation of the recipient undertaking without being necessary in order for the aims laid down in Article 87(3) EC to be attained — None — Public funding of the move to terrestrial digital television — Assessment of the criterion of necessity (Art. 87(3) EC) (see paras 44, 46-48)

2. *Appeals — Grounds — Plea submitted for the first time in the context of the appeal — Inadmissibility (see para. 63)*

3. *State aid — Prohibited — Derogations — Aid eligible for the derogation laid down in Article 87(3)(c) EC — Conditions — Transition from analogue to digital broadcasting — Condition of technological neutrality — Assessment (Art. 87(3)(c) EC; Commission notice COM(2003) 541 final) (see paras 77, 79-81)*

Re:

Appeal against the judgment of the Court of First Instance (Seventh Chamber) of 6 October 2009 in Case T-21/06 *Germany* v *Commission* by which that court dismissed the action for annulment of Commission Decision 2006/513/EC of 9 November 2005 on the state aid which the Federal Republic of Germany has implemented for the introduction of digital terrestrial television in Berlin-Brandenburg (OJ 2006 L 200, p. 14) — Infringement of Article 107(3)(c) TFEU.

Operative part

The Court:

1. Dismisses the appeal;

2. Orders the Federal Republic of Germany to pay the costs.