Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 4 September 2009 in Case T-211/05 *Italy* v *Commission*, by which that court dismissed the application for annulment of Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (OJ 2006 L 94, p. 42).

Operative part

The Court:

1. Dismisses the appeal;

2. Orders the Italian Republic to pay the costs;

3. Orders the Republic of Finland to bear its own costs.

Judgment of the Court (Third Chamber) of 24 November 2011 — Commission v Italy

(Case C-379/10)

(Failure to fulfil obligations — General principle that Member States are liable for the infringement of European Union law by one of their courts adjudicating at last instance — Exclusion of any liability on the part of the Member State for an interpretation of the rules of law or an assessment of the facts and evidence carried out by a court adjudicating at last instance — Limitation by the national legislature of the Member State's liability to cases of intentional fault or serious misconduct committed by such a court)

Union law — Rights conferred on individuals — Infringement by a Member State — Obligation to make good damage caused to individuals — Conditions in the case of infringement ascribable to a supreme court — Whether the infringement is obvious — National legislation under which liability is incurred only in cases of intentional fault or serious misconduct — Unlawful (see paras 40-42, 46, 48 and operative part

Re:

Failure of a Member State to fulfil obligations – Infringement of the general principle that Member States are liable for the infringement of European Union law by one of their courts adjudicating at last instance – Liability limited to cases of intentional fault or serious misconduct.

Operative part

The Court:

1. Declares that,

by excluding all liability of the Italian State for damage caused to individuals through an infringement of European Union law on the part of a court adjudicating at last instance when that infringement results from an interpretation of the rules of law or an assessment of the facts and evidence carried out by that court and

by limiting that liability to cases of intentional fault or serious misconduct,

pursuant to Article 2(1) and (2) of Law No 117 on the reparation of damage caused in the exercise of judicial functions and the civil liability of judges [legge n. 117 (sul) risarcimento dei danni cagionati nell esercizio delle funzioni giudiziarie e responsabilità civile dei magistrati], of 13 April 1988 the Italian Republic has failed to fulfil its obligations under the general principle

that Member States are liable for the infringement of European Union law by one of their courts adjudicating at last instance;

2. Orders the Italian Republic to pay the costs.

Order of the Court (Eighth Chamber) of 29 November 2011 — Tresplain Investments v OHIM

(Case C-76/11 P)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Articles 8(4) and 52(1)(c) — Community figurative mark Golden Elephant Brand — Application for a declaration of invalidity based on a non-registered national figurative mark GOLDEN ELEPHANT — Renvoi to the national law governing the earlier trade mark — Common-law action for passing-off)

1. *Appeals — Grounds — Plea submitted for the first time in the context of the appeal — Inadmissibility (see para. 53)*

2. *Appeals — Grounds — Incorrect assessment of the facts and evidence — Inadmissibility — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted (Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.) (see para. 73)*

Re:

Appeals against the judgment of the General Court (Eighth Chamber) of 9 December 2010 in Case T-303/08 *Tresplain Investments* v *OHIM – Hoo Hing* by which that court dismissed the action brought by the proprietor of the Community figurative mark 'Golden Elephant Brand', for goods in class 30, against Decision R 889/2007-1 of the