

Form of order sought

- annul the decision of the Fourth Board of Appeal of OHIM of 6 October 2008 in Case R 846/2008-4;
- order OHIM to bear its own costs and pay those of the applicant.

Pleas in law and main arguments

Community trade mark concerned: Figurative trade mark as 'other mark — positional mark' of the colour 'orange' (Pantone 16-1359 TPX) for goods in Class 25 (application No 5 658 117).

Decision of the Examiner: Registration refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 40/94,⁽¹⁾ since the trade mark applied for fulfils the minimum requirement as to distinctive character.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 15 December 2008 — Tudapetrol Mineralölerzeugnisse Nils Hansen v Commission

(Case T-550/08)

(2009/C 55/59)

Language of the case: German

Parties

Applicant: Tudapetrol Mineralölerzeugnisse Nils Hansen KG (Hamburg, Germany) (represented by: U. Itzen and J. Ziebarth, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul the contested decision in so far as it relates to the applicant;
- in the alternative, reduce as appropriate the level of the fine imposed on the applicant in the contested decision;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant is challenging Commission Decision C(2008) 5476 final of 1 October 2008 in Case COMP/39.181 — Candle Waxes, in which the defendant found that certain undertakings, including the applicant, had participated in a continuing agreement and/or concerted practice in the paraffin waxes sector, contrary to Article 81(1) EC and Article 53 of the Agreement on the European Economic Area.

The applicant relies on two pleas in law in support of its action.

By its first plea in law, the applicant claims that there has been an infringement of the duty to state reasons under Article 253 EC and an infringement of the rights of the defence inasmuch as the appraisal of evidence carried out by the Commission in the contested decision does not in fact specifically indicate which acts contributing to the offence are to be attributed to the applicant. The broad-brush appraisal of the evidence carried out by the Commission relates to, besides the applicant, also other companies, the actions of which cannot be attributed to the applicant. In light of the unclear appraisal of the evidence, there is an infringement of the rights of the defence, as the Commission is under an obligation to indicate, in a clear and unequivocal manner, which contributory acts it attributes to which undertakings and the consequences thereof.

The applicant further claims that it was not involved in any activity contrary to Article 81 EC. Not only did the Commission fail, in formal terms, to carry out a proper appraisal of the evidence, but even a subsidiary substantive examination of the evidence indicates that no allegation made against the applicant was substantiated. The conclusion that the applicant infringed the law on cartels cannot be drawn from the meetings detailed and the evidence thereof provided in the framework of the appraisal of the evidence. This is especially true also in light of the fact that only a limited allegation was made from the outset in relation to the applicant. That fact, however, was not taken into consideration when the evidence was being appraised; instead, and to the further detriment of the applicant, account was taken of evidence which might prove potential offences on the part of third parties but in which the applicant was not involved.

By its second plea in law, the applicant claims that the limitation period had expired. It claims that it had already, at the beginning of 2000, transferred the distribution business in question to another company, with the result that the first measures in early 2005 that stopped the limitation period running could no longer have led to action being taken against the applicant in respect of an old offence.

Action brought on 15 December 2008 — H & R ChemPharm v Commission

(Case T-551/08)

(2009/C 55/60)

Language of the case: German

Parties

Applicant: H & R ChemPharm GmbH (Salzbergen, Germany) (represented by: M. Klusmann and S. Thomas, lawyers)

Defendant: Commission of the European Communities