— infringement of the principle of proper administration and Articles 84 and 94 of the Financial Regulation, since the evaluation procedure was proceeded with, even though only one tender remained and the defendant took no action when the applicant informed it of a conflict of interests that favoured ICAS Consortium;

— an error of law committed by the defendant in rejecting the applicant's tender on the basis of Article 120(4) of the Implementing Rules of the Financial Regulation, since that article does not allow a tender to be rejected automatically without being evaluated, unless it fails to meet an essential requirement or a specific requirement in the specification;

— the alleged infringements of the legal rules caused direct and certain loss to the applicant, for which it is justified in seeking compensation.

Action brought on 13 September 2010 — Cortés del Valle López v OHIM (HIJOPUTA)

(Case T-417/10)

(2010/C 301/94)

Language of the case: Spanish

Parties

Applicant: Federico Cortés del Valle López (Maliaño, Spain) (represented by J. Calderón Chavero, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 18 June 2010 in case R 175/2010-2;

— consequently, annul the OHIM examiner's decision of 24 November 2009;

— uphold the applicant's claims;

— order the defendant to pay the costs of the present proceedings should they be contested and reject its contentions.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark containing the word element '¡Que buenu ye! HIJOPUTA' for goods and services in Classes 33, 35 and 39.

Decision of the Examiner: Application for a Community trade mark refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: No infringement of Article 7(1)(f) of Regulation No 207/2009, [1] as the mark applied for is not contrary to accepted principles of morality.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 15 September 2010 — voestalpine and voestalpine Austria Draht v Commission

(Case T-418/10)

(2010/C 301/95)

Language of the case: German

Parties

Applicants: voestalpine AG (Linz, Austria), voestalpine Austria Draht GmbH (Bruck an der Mur, Austria) (represented by: A. Ablasser-Neuhuber and G. Fussenegger, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement in Case COMP/38.344 — Prestressing steel, in so far as it relates to the applicants;

— in the alternative, reduce the fine imposed on the applicants under Article 2 of the Decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants contest Commission Decision C(2010) 4387 final of 30 June 2010 in Case COMP/38.344 — Prestressing steel. The contested decision imposed fines on the applicants and other undertakings for infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicants participated in a continuing agreement and/or concerted action in the prestressing steel sector in the internal market and the EEA.

In support of their action, the applicants have submitted three pleas in law.

By the first plea in law, the applicants submit that they did not infringe Article 101 TFEU. They maintain that it is misconceived for them to be held liable for participation exclusively by virtue of a commercial agent in Italy, since that commercial agent did not represent the applicants at meetings of the 'Club Italia'; the conduct of a non-exclusive commercial agent cannot be imputed to the applicants in the absence of an economic unit; the defendant's automatic imputation of the conduct of a non-exclusive commercial agent is contrary to the case-law of the Court; and the applicants had no knowledge at all of the commercial agent's actions. In the alternative, it is submitted that the duration of the infringement was set incorrectly with respect to the applicants.

By the second plea in law, the applicants deny any participation in a single, complex and continuing infringement. They submit, inter alia, that the 'Club Italia' infringement is to be distinguished from other infringements referred to in the contested decision. Furthermore, they submit that they did not participate in a single, complex and continuing infringement since they had no knowledge of the overall plan, could not reasonably have foreseen it and would not have been prepared to accept the risks arising therefrom.

Lastly, by their third plea, the applicants complain of errors in the calculation of the fine. The applicants allege infringement of the principle of proportionality, since a disproportionately large fine was imposed in connection with new (unforeseeable) legal issues and the same fine was imposed in the case of mere knowledge of infringements by other undertakings. Furthermore, infringements are said to have occurred in respect of the principle of equal treatment, the Guidelines on setting fines ([1]) and the rights of the defence, as well as the right to a fair trial.

([1]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

Action brought on 14 September 2010 — Ori Martin v Commission

(Case T-419/10)

(2010/C 301/96)

Language of the case: Italian

Parties

Applicant: Ori Martin SA (Luxembourg, Luxembourg) (represented by: P. Ziotti, lawyer)

Defendant: European Commission

Form of order sought

— Annulment of the decision of the European Commission of 30 June 2010 C(2010) 4387 final on a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Prestressing steel), in so far as it attributes to the applicant liability for the conduct penalised;

— annulment or reduction of the fine imposed under Article 2 of that decision;

— an order that the Commission should pay the costs.

Pleas in law and main arguments

The decision contested in this case is the same as that in Case T-385/10 *Arcelor/Mittal Wire France* v *Commission*.

The applicant maintains that the European Commission decision C(2010) 4387 final of 30 June 2010 is unlawful in that it makes the applicant liable solely because it (almost) wholly owns the company which is alleged to have committed the collusive acts penalised under Article 101 TFEU.

In particular, the applicant pleads:

— infringement of Article 25(1)(b) of Regulation (EC) No 1/23, in that the Commission's power to impose fines was time-barred in the circumstances of the case;

— infringement of Article 101 TFEU and breach of the principles of the personal nature of liability and penalties, of sound administration and non-discrimination, in that the Commission goes so far as to attribute to the applicant real and personal strict liability for the possibly unlawful acts committed by the company it controls, liability subject to an irrebuttable presumption which cannot in point of fact be challenged by evidence to the contrary. That liability on the basis of ownership is unexampled and contrary to the principles laid down by Community case-law in relation to the application of Article 101 TFEU when groups of companies are concerned;

— breach of the principle that capital companies enjoy limited liability by virtue of the company law common to the laws of the Member States and to the law of the European Union itself.

Ori Martin then seeks annulment or, at least, a considerable reduction of the fine imposed.