

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'ELECTRIC HIGHWAY' — Application for registration No 010655819

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 3 March 2015 in Case R 1442/2014-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- allow the applicant's application for the mark to proceed in full to registration;
- order OHIM to pay its own costs and those of the applicant.

Pleas in law

- Incorrect interpretation of the meaning of the mark in relation to Article 7(1)(c) of Regulation No 207/2009;
- Incorrect interpretation of the relevant services in Class 39;
- The meaning of the mark asserted by the Board does not describe the services in any event;
- Incorrect application of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 11 September 2015 — Huhtamaki and Huhtamaki Flexible Packaging Germany v Commission

(Case T-530/15)

(2015/C 406/33)

Language of the case: English

Parties

Applicant(s): Huhtamaki Oyj (Espoo, Finland) and Huhtamaki Flexible Packaging Germany GmbH & Co.KG (Ronsberg, Germany) (represented by: H. Meyer-Lindemann, C. Graf York von Wartenburg and L. Titze, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Article 1(2) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it finds that Huhtamaki Oyj infringed Article 101 TFEU by participating, for the period indicated at Article 1(2) d) of the Commission Decision, in a single and continuous infringement which consisted of several separate infringements, in the foam trays for retail food packaging sector and covering the territory of Spain, from the beginning of the infringement, and Portugal, from 8 June 2000; and

- annul Article 1(3) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it finds that the Applicants infringed Article 101 TFEU and Article 53 EEA by participating, for the periods indicated at Article 1(3) c) of the Commission Decision, in a single and continuous infringement, which consisted of several separate infringements, in the foam and rigid trays for retail food packaging sector and covering the territory of Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway, and Sweden; and
- annul Article 1(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it finds that Huhtamaki Oyj infringed Article 101 TFEU by participating, for the periods indicated at Article 1(5) d) of the Commission Decision, in a single and continuous infringement which consisted of several separate infringements, in the foam trays for retail food packaging sector and covering the territory of France; and
- annul Article 2(3) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it imposes fines in the aggregate of EUR 10 806 000 on the Applicants; and
- annul Article 2(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it imposes a fine of EUR 4 756 000 on Huhtamaki Oyj; and
- in the alternative, substantially reduce the fines imposed on the Applicants; and
- in any case, order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that the Commission infringed Articles 101 TFEU and 53 EEA as it committed manifest errors in fact and in law, and infringed its duty to state reasons, in finding that the Applicants engaged in activities in relation to foam trays and rigid trays in 'North-West Europe' in the period between 13 June 2002 and 20 June 2006 that can be qualified, when looked at in isolation, respectively, as separate infringements of Articles 101(1) TFEU and 53 EEA.
2. Second plea in law, alleging that the Commission infringed Articles 101 TFEU and 53 EEA, as it committed a manifest error of assessment, and infringed its duty to state reasons, in finding that the Applicants participated in a single and continuous infringement in relation to foam trays and rigid trays in 'North-West Europe' during the period between 13 June 2002 and 20 June 2006.
3. Third plea in law, alleging that the Commission infringed the principles of proportionality and equal treatment, its own Guidelines on the setting of fines, and the duty to state reasons, by failing to consider, when determining the fine(s) to be imposed on the Applicants, individual circumstances which warranted reductions of the fines on the Applicants.

4. Fourth plea in law, alleging that the Commission infringed Article 101 TFEU and 23(2) of Council Regulation (EC) No 1/2003 in finding Huhtamaki Oyj to be jointly and severally liable, as the ultimate group holding company and thus as indirect parent company, for its former indirect subsidiaries' alleged participation (i) in a single and continuous infringement in the foam trays for retail food packaging sector in the territory of France from 3 September 2004 to 24 November 2005, and (ii) in a single and continuous infringement in the foam trays for retail food packaging sector in the territories of Spain and Portugal (together referred to as 'South-West Europe') from 7 December 2000 to 18 January 2005. Huhtamaki Oyj did not exercise decisive influence over Huhtamaki France SA or Huhtamaki Embalagens Portugal SA during the periods in question.

Action brought on 11 September 2015 — Coveris Rigid (Auneau) France v Commission

(Case T-531/15)

(2015/C 406/34)

Language of the case: English

Parties

Applicant: Coveris Rigid (Auneau) France (Auneau, France) (represented by: H. Meyer-Lindemann, C. Graf York von Wartenburg and L. Titze, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Article 1(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — Retail food packaging, in so far as it finds that the Applicant infringed Article 101 TFEU by participating, for the period indicated in Article 1(5)d) of the Commission's Decision, in a single and continuous infringement consisting of several separate infringements in the foam tray for retail food packaging sector and covering the territory of France; and
- annul Article 2(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — Retail food packaging, in so far as it imposes a fine of EUR 4 756 000 on the Applicant; and
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging that the Commission erroneously applied the principle of personal responsibility in holding Coveris liable for alleged participation in a single and continuous infringement in the foam tray for retail food packaging sector in France. The exceptional circumstances of the case warranted the application of a holistic view in relation to the two parts of the ONO Packaging management buy-out or, alternatively, the application of the principle of economic continuity in relation to the asset deal part of the transaction. On that basis, Coveris could not be held liable for the alleged infringement.