

Plea in law

- Infringement of Article 7(1)(b) and (c) and (2) of Regulation No 207/2009.

Action brought on 15 January 2016 — Gauff v OHIM — H.P. Gauff Ingenieure (GAUFF)**(Case T-13/16)**

(2016/C 090/31)

*Language in which the application was lodged: German***Parties**

Applicant: Gauff GmbH & Co. Engineering KG (Nuremberg, Germany) (represented by: A. Molnar)

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

Other party to the proceedings before the Board of Appeal: H.P. Gauff Ingenieure GmbH & Co. KG — JBG (Frankfurt am Main, Germany)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word element 'Gauff' — Community mark No 6 327 977

Procedure before OHIM: Invalidity proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 12 November 2015 in Case R 549/2015-1

Form of order

The applicant claims that the Court should:

- annul the contested decision; or

in the alternative, send the case back to OHIM for further examination of the disputed matters that were, in error, not examined;

- order OHIM to pay the costs of the proceedings including those incurred in the proceedings before the Board of Appeal.

Plea in law

- Infringement of Articles 53, 56, 57, 76 of Regulation No 207/2009 and infringement of Regulation No 2868/95 as well as infringement of the right to be heard and failure to state reasons.

Action brought on 8 January 2016 — Apimab Laboratoires and Others v Commission**(Case T-14/16)**

(2016/C 090/32)

*Language of the case: French***Parties**

Applicants: Apimab Laboratoires (Clermont-l'Hérault, France), Sarl BBI — Blanche Bresson Institut (Barbentane, France), Institut de recherche biologique — IRB (Montaigu, France), Laboratoires Arkopharma (Carros, France), Laboratoires Juva Santé (Paris, France), Ortis (Bütgenbach, Belgium), Pierre Fabre Médicament (Boulogne-Billancourt, France), Pollenergie (Saint-Hilaire-de-Lusignan, France) (represented by: A. de Brosses, lawyer)

Defendant: European Commission

Form of order sought

- Hold and rule that Regulation No 2015/1933 of 27 October 2015 was adopted without prior consultation of the European Food Safety Authority and, accordingly, in breach of the procedure applicable to its adoption;
- Hold and rule that the Commission erred in law in adopting Regulation No 2015/1933 without a scientific assessment of the risk, in breach of Article 6 of Regulation No 178/2002;
- Hold and rule that the Commission has made a manifest error of assessment by restricting, in Regulation No 2015/1933 of 27 October 2015, the levels of benzo(a)pyrene in certain food supplements to 10 micrograms if used alone or to 50 micrograms if mixed with other substances;
- Hold and rule that the Commission has infringed the principle of proportionality by restricting, in Regulation No 2015/1933 of 27 October 2015, the levels of benzo(a)pyrene in certain food supplements to 10 micrograms if used alone or to 50 micrograms if mixed with other substances;
- Hold and rule that the Commission has infringed the principle of non-discrimination by restricting, in Regulation No 2015/1933 of 27 October 2015, the levels of benzo(a)pyrene in certain food supplements to 10 micrograms if used alone or to 50 micrograms if mixed with other substances.

In consequence:

- Annul Regulation No 2015/1933 of 27 October 2015 as regards its provisions on food supplements;
- Order the Commission to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement by the Commission of the procedural rules following from Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food ('the Framework Regulation') in the adoption of Commission Regulation (EU) No 2015/1933 of 27 October 2015 amending Regulation (EC) No 1881/2006 as regards maximum levels for polycyclic aromatic hydrocarbons in cocoa fibre, banana chips, food supplements, dried herbs and dried spices ('the contested regulation').
2. Second plea in law, alleging an error of law committed by the Commission at the time of the adoption of the contested regulation and an infringement of Article 2 of the Framework Regulation justifying the annulment of the contested regulation as without legal basis.
3. Third plea in law, alleging an error of law committed by the Commission, in that it failed to consult the European Food Safety Authority and did not carry out any prior scientific assessment, in disregard of the requirements of Article 6 of Regulation No 178/2002.
4. Fourth plea in law, alleging a manifest error of assessment, in that the contested regulation impliedly rests on the finding that consumers would ingest similar quantities of polycyclic aromatic hydrocarbons (PAHs) via food supplements as they would via common foods, which is not the case.
5. Fifth plea in law, alleging an infringement by the Commission of the principle of proportionality, in that the setting of the maximum levels of PAHs goes beyond what is necessary to protect public health.
6. Sixth plea in law, alleging an infringement by the Commission of the principle of non-discrimination, in that the contested regulation has not taken account of the differences between food supplements and other foodstuffs, by setting the maximum levels of PAHs in line with the type of foodstuff concerned.