

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 22 November 2021 in Case R 684/2021-1

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs of and occasioned by this application and other incurred costs; alternatively if the other party before the EUIPO intervenes, hold it and the defendant jointly and severally liable for those costs.

Plea in law

- Infringement of Article 8(4) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 15 February 2022 — Credit Suisse Group and Others v Commission

(Case T-84/22)

(2022/C 148/52)

Language of the case: English

Parties

Applicants: Credit Suisse Group AG (Zurich, Switzerland), Credit Suisse AG (Zurich), Credit Suisse Securities (Europe) Ltd (London, United Kingdom) (represented by: R. Wesseling and F. Brouwer, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the Commission Decision C(2021) 8612 final of 2 December 2021 in Case AT.40135 — FOREX (Sterling Lads) (the ‘Decision’) pursuant to Article 263 TFEU;
- in the alternative, partially annul Article 1 of the Decision pursuant to Article 263 TFEU and reduce the fine imposed in Article 2 of the Decision pursuant to Article 261 TFEU;
- in any event, reduce the amount of the fine imposed in Article 2 of the Decision pursuant to Article 261 TFEU;
- prescribe, as a measure of organisation of procedure or inquiry pursuant to Article 88(1) and Articles 89(3)(d) or 91(b) of the Rules of Procedure of the General Court respectively, the production of the settlement decision by the Commission;
- order the Commission to pay the Applicants’ costs or, in the alternative, an appropriate proportion of their costs pursuant to Article 134 of the Rules of Procedure.

Pleas in law and main arguments

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging that the Commission violated Article 101 TFEU and failed to provide sufficient reasons in finding that the Information Exchange Chats constitute agreements and/or concerted practices. In particular,
 - the Commission failed to adduce the requisite evidence to establish the existence of the Underlying Understanding and, by extension, that the Information Exchange Chats constitute an agreement and/or concerted practice within the meaning of Article 101 TFEU;

- in the alternative, the evidence relied on by the Commission is incapable of proving to the requisite legal standard that the Information Exchange Chats constitute an agreement and/or concerted practice within the meaning of Article 101 TFEU.
2. Second plea in law, alleging that the Commission violated Article 101 TFEU and provided insufficient reasons in finding that the Information Exchange Chats, seen in isolation or as part of an alleged single and continuous infringement comprising other alleged conduct for which CS is not held liable, had as their object the restriction and/or distortion of competition. In particular,
- the Commission failed to discharge its burden of proof under Article 101 TFEU that the Information Exchange Chats restrict competition by object;
 - the Commission erred in law by concluding that a legitimate explanation for conduct and pro-competitive effects are irrelevant under Article 101(1) TFEU.
3. Third plea in law, alleging that the Commission violated Article 101 TFEU and provided insufficient reasons in applying the concept of the single and continuous infringement. In particular,
- the Commission failed to prove and to provide sufficient reasons that there was an overall plan pursuing a common objective to which CS intended to contribute or of which it was aware or could have foreseen;
 - the Commission erred in law by concluding that the Underlying Understanding is an element of an alleged single and continuous infringement.
4. Fourth plea in law, alleging that the Commission breached Article 23 of Regulation 1/2003, the Guidelines on Fines, the principles of proportionality and equal treatment and the duty to state reasons. In particular,
- the Commission adopted a value of sales proxy that significantly and arbitrarily overstates CS' value of sales and therefore the economic importance of the alleged infringement, departing from the concept of 'value of sales' in the Guidelines on Fines;
 - the reduction granted to CS for mitigating circumstances is disproportionately low and fails to take into account other mitigating circumstances;
 - the fine imposed on CS significantly overstates the gravity of the alleged infringement;
 - the fine imposed on CS violates the principle of equal treatment;
 - the Commission failed to provide sufficient reasons for the Court to be able to assess the proportionality of CS' fine calculation relative to that of the settling parties.
5. Fifth plea in law, alleging that the Commission breached the principle of sound administration and violated CS' rights of defence by failing to conduct a diligent and impartial investigation.

Action brought on 18 February 2022 — Homy Casa v EUIPO — Albatros International (Chairs)

(Case T-89/22)

(2022/C 148/53)

Language in which the application was lodged: German

Parties

Applicant: Homy Casa Ltd (Guangzhou, China) (represented by: J. Vogtmeier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Albatros International GmbH (Nerdlen, Germany)