

— to order the Applicant to pay the costs incurred by the Opponent

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark 'JULIUS K9' for goods in Classes 18, 25 and 28 — Community trade mark application No 8 542 201

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Two figurative marks depicting a dog, (crossed) bone(s) and the alphanumeric combination 'K 9' for goods in Classes 14, 18 and 25

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8 (1)(b) of Council Regulation No 207/2009.

Action brought on 4 June 2012 — Versalis v Commission

(Case T-241/12)

(2012/C 227/48)

Language of the case: Italian

Parties

Applicant: Versalis SpA (San Donato Milanese, Italy) (represented by: F. Moretti, L. Nascimbene and M. Siragusa, lawyers)

Defendant: European Commission

Form of order sought

The applicant submits that the Court should:

— annul the contested measure by which the Commission held that the necessary conditions were present for reopening the procedure for imposing a penalty on Versalis SpA and Eni SpA, and order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The present action has been brought against the decision allegedly contained in the letter from the European Commission of 23 April 2012 (D/2012/042050, entitled: COMP/F/38.638 — *Butadiene rubber and emulsion styrene butadiene rubber* — *Re-adoption*) by which Versalis SpA was informed of the Commission's decision to proceed with the adoption of a new statement

of objections and a new infringement decision which will impose a fine on that company, in connection with Procedure COMP/F/38.638 — *Butadiene rubber and emulsion styrene butadiene rubber*. That letter follows on from the judgment of 13 July 2011 in Case T-59/07, by which the General Court annulled the part of the infringement decision concerning the charge against the applicant — and, jointly and severally with that company, against Eni — relating to the aggravating circumstance of repeat infringements, leading to a recalculation of the fine imposed.

In support of its action, the applicant relies on a single plea in law.

By its first and only plea, the applicant alleges that the Commission lacked competence to reopen the procedure for imposing a penalty on it with a view to the adoption of the new infringement decision. In particular, the applicant maintains that the Commission's power to impose penalties on Versalis SpA in connection with the subject-matter of Procedure COMP/F/38.638 — *Butadiene rubber and emulsion styrene butadiene rubber* came to an end following the adoption of the decision of 29 November 2006 (Commission Decision C(2006) 5700 final), as annulled and altered by the General Court of the European Union in its judgment of 13 July 2011 in Case T-59/07, at present under appeal before the Court of Justice.

Action brought on 8 June 2012 — Fuhr v Commission

(Case T-248/12)

(2012/C 227/49)

Language of the case: German

Parties

Applicant: Carl Fuhr GmbH & Co. KG (Heiligenhaus, Germany) (represented by: C. Bahr, S. Dethof and A. Malec, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2012) 2069 final of 28 March 2012 in Case COMP/39452 — *Mountings for windows and window-doors*, in so far as it concerns the applicant;

— in the alternative, reduce, as appropriate, 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

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

First, the applicant alleges infringement of Article 101 TFEU as a result of the assumption that the applicant participated in a complex single infringement. As a result of the global approach and assessment of the conduct of each of the undertakings concerned and an unlawful uniform approach towards all the participants, the defendant was in breach of its obligation to carry out a legal assessment of the individual participation of the undertakings involved. The defendant attributed the participation of others to the applicant without any legal basis for doing so, and thereby breached the principle *nulla poena sine lege* under Article 49(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

Second, the applicant complains of the erroneous assumption that the applicant participated in an EEA-wide infringement. The applicant did not participate in any of the numerous meetings and contacts outside Germany. Furthermore, it was not aware of an EEA-wide infringement, nor, in all the circumstances, should it have recognised this.

Third, the applicant alleges breach of the defendant's obligation properly to state the reasons for its decision, in accordance with the second paragraph of Article 296 TFEU, on account of the global, uniform view taken of the participation of each of the undertakings concerned.

Fourth, the applicant alleges miscalculation of the fine owing to the inclusion of unrelated turnover, and thus infringement of Article 23(3) of Regulation No 1/2003 and of the 2006 Guidelines on fines. Given the lack of participation in an EEA-wide infringement, the defendant was entitled to take into account only the applicant's turnover in Germany. Furthermore, the defendant was not entitled to take into account unrelated turnover involving wholesale customers who, as intended, sold the goods purchased exclusively outside the EEA.

Fifth, the applicant alleges fundamental errors of assessment in the calculation of the fine imposed on it, and thus infringement of Article 23(3) of Regulation No 1/2003 and breach of the principle of the proportionality of the penalty to the offence, laid down in Article 49(3), in conjunction with Article 48(1), of the Charter. The fine imposed on the applicant is excessively high and disproportionate. In calculating the fine the defendant failed, in particular, to assess the individual participation of the applicant in terms of duration, scope and intensity, or to take account of mitigating circumstances in the applicant's favour.

Sixth, the applicant alleges breach of the principle of equal treatment on account of the arbitrary and incomprehensible

insufficiently substantial reduction in the applicant's fine. The reduction in the applicant's fine is not commensurate with the extent of the reduction in the fines of all other participants, severely disadvantages the applicant and is in no way objectively justified.

Seventh, the applicant alleges breach of the principle of equal treatment in the calculation of the basic amount of the fine. Without taking any account at all of the gravity of the individual participation, the defendant established the same percentage of the basic amount of the fine in respect of all of the undertakings, and thereby severely disadvantaged the applicant.

Eighth, the applicant complains that the excessive duration of the proceedings and the failure to take that into account in the calculation of the fine constitutes an infringement of Article 41 of the Charter.

Action brought on 6 June 2012 — EGL and Others v Commission

(Case T-251/12)

(2012/C 227/50)

Language of the case: English

Parties

Applicants: EGL, Inc. (Houston, United States), CEVA Freight (UK) Ltd (Ashby de la Zouch, United Kingdom), CEVA Freight Shanghai Ltd (Shanghai, China) (represented by: M. Brealey, QC (Queen's Counsel), S. Love, Barrister, M. Pullen, D. Gillespie and R. Fawcett-Feuillette, Solicitors)

Defendant: European Commission

Form of order sought

- Annul Article 1 of the Commission Decision C(2012) 1959 final, dated 28 March 2012 in case COMP/39462 — *Freight Forwarding*, relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement, insofar as the applicants were found to have been involved in two infringements of Article 101(1) TFEU, consisting of the so-called New Export System ('NES') arrangement and the Currency Adjustment Factor ('CAF') arrangement;
- Annul Article 2 of Commission Decision C(2012) 1959 final, dated 28 March 2012, insofar as it imposes fines on the applicants or, in the alternative, reduce the amount of the fine; and
- Order the defendant to pay the costs of making the application.