

### Pleas in law and main arguments

By means of the present application, the applicants seek, pursuant to Article 265 TFEU, a declaration that the Commission has failed to act by not having defined its position in case C 36/07 (ex NN 25/07) — Germany/Deutsche Post ((OJ 2007 C 245, p. 21).

In support of their action, the applicants submit that since the Commission has not defined its position in the above mentioned investigation procedure within a reasonable time period, it has breached Articles 7 and 13 of Regulation (EC) No 659/1999 <sup>(1)</sup>.

In addition, by failing to define its position within a reasonable time period, the Commission has also breached the principles of good administration and legal certainty. According to the applicants, the principle of sound administration should have been respected since it is one of the general principles common to the constitutional traditions of the Member States. Moreover, this principle is clearly reflected in Article 41(1) of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389).

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

### Action brought on 18 August 2010 — Borax Europe v ECHA

(Case T-346/10)

(2010/C 288/95)

*Language of the case: English*

#### Parties

*Applicant:* Borax Europe Ltd (London, United Kingdom) (represented by: K. Nordlander, lawyer and H. Pearson, Solicitor)

*Defendant:* European Chemicals Agency (ECHA)

### Form of order sought

— declare the application for annulment admissible;

— annul the decision by ECHA to identify certain borate substances as ‘substances of very high concern’ meeting the criteria set out in Article 57(c) of Regulation (EC) No 1907/2006 (‘REACH’) <sup>(1)</sup> and to add them to the Candidate List of Substances of Very High Concern for Authorisation (‘candidate list’) on 18 June 2010 (the ‘contested act’);

— order ECHA to pay the Applicant’s costs for these proceedings.

### Pleas in law and main arguments

The Applicant seeks the annulment of the decision by ECHA to identify certain borate substances as ‘substances of very high concern’ meeting the criteria set out in Article 57(c) REACH and to add them to the candidate list on 18 June 2010. The contested act was brought to the applicant’s attention by means of an ECHA press release of 18 June 2010.

The borate substances whose inclusion in the candidate list via the contested act the applicant challenges are: boric acid, CAS No 10043-35-3, EC No 233-139-2; disodium tetraborate, anhydrous; disodium tetraborate decahydrate; disodium tetraborate pentahydrate (CAS Nos 1330-43-4, 1303-96-4, 12179-04-3, EC No 215-540-4) (‘borates’).

In support of the application, the applicant puts forward three pleas in law.

First ground: the contested act should be annulled as it was based on Annex XV dossiers which contain manifest errors, leading to a breach of an essential procedural requirement in Article 59 of REACH. Those dossiers indicate, as the justification for ECHA action, that borates are currently classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008, which is factually incorrect.

Second ground: ECHA adopted the contested act without discharging its function of performing an ‘on the merits’ assessment of whether borates meet the criteria referred to in Article 57(c) of REACH. Thus, in adopting the contested act, ECHA committed manifest errors of assessment, exceeded its powers and infringed the principle of good administration.

Third ground: finally, borates do not meet the criteria, referred to in Article 57(c) of REACH, for classification as toxic to reproduction category 1 or 2 under Directive 67/548. Accordingly, they are not 'substances of very high concern' and their inclusion in the candidate list via the contested act infringes Article 59(8) of REACH.

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(<sup>1</sup>) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

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**Action brought on 27 August 2010 — Adelholzener Alpenquellen v OHIM (Shape of a bottle with a relief-like depiction of three mountain summits)**

(Case T-347/10)

(2010/C 288/96)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* Adelholzener Alpenquellen GmbH (Siegsdorf, Germany) (represented by O. Rauscher, lawyer)

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

#### Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 June 2010 in Case R 1516/2009-1;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

#### Pleas in law and main arguments

*Community trade mark concerned:* the three-dimensional mark in the shape of a bottle with a relief-like depiction of three mountain summits for goods in Class 32

*Decision of the Examiner:* rejection of the application

*Decision of the Board of Appeal:* dismissal of the appeal

*Pleas in law:* Infringement of Article 7(1)(b) of Regulation (EC) No 207/2009 (<sup>1</sup>) as the Community trade mark at issue has distinctive character; infringement of Article 37(2) of Regulation (EC) No 207/2009 as the Board of Appeal should not have based its decision on the absence of a disclaimer; and infringement of Article 75(2) of Regulation (EC) No 207/2009 as the applicant was unable to comment on certain depictions on which the decision was based

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

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**Action brought on 16 August 2010 — Panzeri v OHIM — Royal Trophy (Royal veste e premia lo sport)**

(Case T-348/10)

(2010/C 288/97)

*Language in which the application was lodged: Italian*

#### Parties

*Applicant:* Luigi Panzeri (Monguzzi, Italy) (represented by: C. Galli, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Royal Trophy Srl (Cava di Tirreni, Italy)

#### Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 20 May 2010 and the decision of the Opposition Division of 30 June 2009;