**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'milko ΔΕΛΤΑ' for goods in class 30 (milk with cocoa) — application No 2 474 674

*Proprietor of the mark or sign cited in the opposition proceedings:* Kraft Foods Schweiz Holding AG

*Mark or sign cited:* The Community, international and national figurative marks and word marks 'MILKA' for goods in classes 5, 29, 30 and 32

*Decision of the Opposition Division:* Opposition upheld in its entirety

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

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the obvious and large differences of the two marks are sufficient to exclude any likelihood of confusion. According to the applicant, the two conflicting trade marks create overall a very different visual, phonetic and conceptual impression, especially when taking the second word 'ΔΕΛΤΑ' into consideration.

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## Action brought on 8 August 2006 — Quinn Barlo and Others v Commission

**(Case T-208/06)**

(2006/C 224/108)

*Language of the case: English*

**Parties**

*Applicants:* Quinn Barlo Ltd (County Cavan, Ireland), Quinn Plastics NV (Geel, Belgium) and Quinn Plastics GmbH (Mainz, Germany) (represented by: W. Blau, F. Wijckmans and F. Tuytschaever, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

— In main order, annul the decision insofar as it holds that the applicants have infringed Article 81 EC and Article 53 EEA Agreement (annulment of Articles 1 and 2 as they relate to the applicants);

— in subsidiary order, annul Article 2 of the decision insofar as it relates to the applicants;

— in further subsidiary order, annul Article 2 of the decision insofar as it imposes a fine on the applicants of EUR 9 million and to reduce the fine in line with the arguments of this application;

— order the Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicants seek the partial annulment of the Commission's Decision C(2006) 2098 final of 31 May 2006 in Case COMP/F/38.645 — Methacrylates, by which the Commission found that the applicants had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by participating in a cartel which consisted of discussing prices, agreeing, implementing and monitoring price agreements either in form of price increases, or at least stabilisation of existing price levels, discussing the passing on of additional service costs to customers, exchange of commercially important and confidential market and/or company relevant information and participating in regular meetings and other contacts to facilitate the infringement.

In support of their application, the applicants invoke two pleas in law.

Firstly, the applicants submit that the contested decision is erroneous as it does not establish to the requisite standard of proof that the applicants participated in a single and common anti-competitive scheme and in a continuous infringement. Furthermore, the role of the applicant's representatives at four specific meetings is assessed incorrectly and, apart from the applicants presence at these four meetings, the contested decision contains no evidence that the applicants have engaged in any conduct that is characterised as unlawful in the decision.

Secondly, the applicants invoke an infringement of Article 23(3) of Regulation No 1/2003 ([1]) due to an incorrect assessment of the duration of the alleged infringement, an incorrect assessment of the gravity of the alleged infringement and an incorrect assessment of the mitigating circumstances.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).