

*Pleas in law and main arguments*

The applicant is contesting Article 3 of the Commission's decision of 24 July 2002 in case COMP/E-3/36.700 — Industrial and medical gases, in so far as it imposes a fine on the applicant for infringement of Article 81 EC. The applicant is contesting only the fine imposed on it, and is not challenging the facts established or the legal assessment thereof.

The applicant claims that the contested decision is contrary to Article 15(2) of Regulation No 17<sup>(1)</sup> and Article 253 EC. Fines to be imposed are to be determined by reference to the seriousness of the infringement and the duration thereof. According to the applicant, that rule has been applied by the Commission in an inequitable and unreasonable manner. The applicant maintains that undertakings which committed the same infringement over the same period should be required, under the terms of the decision, to pay a much smaller fine.

Furthermore, according to the applicant, the Commission, in choosing the addressees of the decision, the turnover attributable to each of those addressees and the order to be applied to the restriction of the fine to 10 % of turnover and the leniency rule, adopted a decision which cannot be objectively justified and which does not justify the considerable differences in the amounts of the fines imposed.

The applicant also pleads infringement of the Community principles of equality and proportionality and of the prohibition precluding arbitrariness. According to the applicant, undertakings involved in a similar measure have been treated in an unequal way.

<sup>(1)</sup> EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ), English Special Edition 1959-1962, p. 87.

**Action brought on 3 October 2002 by Nestlé Waters France against Office for Harmonization in the Internal Market (Trade, Marks and Designs) (OHIM)**

**(Case T-305/02)**

(2002/C 305/56)

*(Language of the case: French)*

An action against Office for Harmonization in the Internal Market (Trade, Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 3 October 2002 by Nestlé Waters France, whose registered office is in Issy-les-Moulineaux (France), represented by Alain Cléry.

The applicant claims that the Court should:

- annul Decision R 719/2000-4 of the Fourth Board of Appeal of the OHIM of 12 July 2002;
- order OHIM to pay the costs.

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The Community trade mark concerned:

The bottle comprises a main section with, at its base, a recess, in the shape of a slightly truncated cone with, in its flat section, a stylised star in relief. In the lower part of the main section, which is nearly cylindrical from bottom to top, there is an initial series of wavy grooves and, in the top part, which is of slightly smaller diameter and bobbin-shaped, there are spiralling grooves which form lozenges when seen through the bottle. The upper section, which is the shape of a slightly truncated cone, ends in a cylindrical neck with a blue cap — Registration No 922179

Goods or service:

Water (Class 32 of the international classification).

Decision of the Board of Appeal:

Refusal of examiner to register the mark.

Grounds of claim:

Infringement of Article 7(1)(b) and (e) of Regulation EEC No 40/94.

**Action brought on 7 October 2002 by Altana Pharma AG against the Office for Harmonisation in the Internal Market (Trade, Marks and Designs)**

**(Case T-307/02)**

(2002/C 305/57)

*(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: German)*

An action against the Office for Harmonisation in the Internal Market (Trade, Marks and Designs) was brought before the Court of First Instance of the European Communities on 7 October 2002 by Altana Pharma AG, Konstanz (Germany), represented by H. Becker, lawyer. N.V. Organon, Oss (Netherlands), was an additional party to the proceedings before the Board of Appeal.