Pleas in law and main arguments

Applicant for Community trade mark:	K & L Ruppert Stiftung & Co. Handels-KG
Community trade mark concerned:	The word mark 'ROSSI' for goods in class 25 (Outer and underclothing; gloves, collar protectors, scarves, neckties, headgear) — application No 876 094
Proprietor of mark or sign cited in the opposition proceedings:	Sergio Rossi
Trade mark or sign cited in opposition:	The national and international, word and figurative marks 'SERGIO ROSSI' for goods class 25 (articles of clothing, including boots, shoes and slippers, scarves, neck-ties, …)
Decision of the Opposition Division:	Upholding of the opposition
Decision of the Board of Appeal:	Annulment of the decision of the Opposition Division
Pleas in law:	Violation of Article 8 of Council Regulation No 40/94.

Action brought on 31 January 2005 by Bayer CropScience AG, Makhteshim Agan Holding BV, Alfa Agricultural Supplies S.A. and Aragonesas Agro S.A. against the Commission of the European Communities

(Case T-34/05)

(2005/C 93/61)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 31 January 2005 by Bayer CropScience AG, established in Monheim (Germany), Makhteshim Agan Holding BV, established in Amsterdam (The Netherlands), Alfa Agricultural Supplies S.A. established in Athens (Greece) and Aragonesas Agro S.A. established in Madrid (Spain), represented by C. Mereu and K. Van Maldegem, lawyers.

The applicants claim that the Court should:

— declare that the defendant has failed to comply with his obligations under Community law to review scientific data submitted by the applicants for the review of endosulfan under Directive 91/414/EEC and to grant them a due process during the review;

— order the defendant to comply with his obligations under Community law and act as requested by the applicants by reviewing and considering all data submitted for the endosulfan review and by granting them a due process, including the right of defence and a fair hearing;

— order the Defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

By letter dated 24 September 2004 the applicants requested the Commission to review scientific data submitted by the applicants to the evaluating authority for the review and authorisation, under Directive 91/414/EC [1], of endosulfan, the active substance of their plant protection product. They also asked to be allowed to address and respond to issues raised by the evaluators during the last stages of the review without any prior consultation with the applicants. By letter dated 26 November 2004 the Commission replied that its services were in the process of preparing a legislative proposal concerning the non-inclusion of endosulfan in Annex I of Directive 91/414. This will result in a ban on the use of this substance.

In support of its application the applicants contend that by failing to review all pertinent and state-of-the-art data submitted by the applicants the Commission violated Articles 95 (3) and 152 (1) EC. They further claim that by failing to act on the applicants request the Commission violated the principle of sound administration enshrined in Article 211 EC as well as their rights of defence, the right to a fair hearing, the duty to provide a statement of reasons and the principle of equal treatment.

The applicants further consider that the Commission's failure to review all the data they submitted neither achieves the desired objective of assessing the safety of plant protection products nor constitutes the least restrictive means to achieve such objectives, since the resulting decision not to include endosulfan in Annex I would cause it to be withdrawn from the EU market with irreparable commercial consequences for the applicants. On this basis the applicants consider the Commission violated the principles of proportionality, of legitimate expectations and of legal certainty. Finally, the applicants submit that by failing to act the Commission encroaches upon their right to conduct business activities and interferes with their right of property.

(1) Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, OJ L 230, p. 1.

Action brought on 31 January 2005 by Coats Holdings Limited and J & P Coats Limited against the Commission of the European Communities

(Case T-36/05)

(2005/C 93/62)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 31 January 2005 by Coats Holdings Limited, established in Uxbridge (United Kingdom) and J & P Coats Limited established in Uxbridge (United Kingdom), represented by W. Sibree and C. Jeffs, Solicitors.

The applicants claim that the Court should:

— declare void and annul the Commission's Decision of 26 October 2004 in Case COMP/F-1/38.338/PO - Needles Doc. C(2004) 4221-final);

— in the alternative, annul such parts of the decision as the Court finds that the Commission has failed to prove or are vitiated by manifest error or inadequate reasoning;

— annul or reduce the fine imposed on the applicants.

— order the Commission to bear its own costs and those incurred by the applicants.

Pleas in law and main arguments

In the contested decision the Commission found that during the period extending from 10 September 1994 to 31 December 1999, the applicants, among other undertakings, had infringed Article 81(1) EC by engaging in concerted practices and entering into a series of agreements which amounted to a tripartite agreement having the effect and object of (i) sharing the European hard haberdashery market, a fact which amounts to product market sharing between the hand sewing and special needles market with the wider markets for needles and with other hard haberdashery markets, and (ii) partitioning the European market for needles, a fact which amounts to geographic market sharing in the needles market.

In support of their application the applicants invoke first of all a series of manifest errors of assessment on the part of the Commission. The applicants do not contest the Commission's findings in relation to the existence of a cartel between the other undertakings mentioned in the contested decision. However, the applicants claim that the Commission's finding that the applicants had also participated in the same cartel is based on speculation, unjustified inference, a large number of simple factual errors and a series of strained interpretations of events. The applicants consider that the Commission's errors are inevitable since it conducted a defective investigation during which it failed to address any pertinent questions to the applicants about the meetings and agreements in question and has failed to appreciate the commercial context in which the applicants operated and which led them to enter into entirely legitimate agreements for the sale of a business and the subsequent supply of needles.

The applicants further claim that even if the Court were to uphold all or part of the alleged infringement the fine should be reduced substantially. According to the applicants the Commission imposed the same fine on the Applicants as that imposed on another participant, despite the fact that even in the Commission' s version of events the applicants played only a minor role compared to the other undertakings. The applicants also considers that the fine is grossly disproportionate to their turnover in the needles market, the only market where their participation could have had any impact, and in this sense grossly disproportionate to any potential economic benefit to themselves or harm to consumers.