Pleas in law and main arguments

The applicant is challenging the Commission decision of 30 November 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/F/38.354 — Industrial bags), in which the applicant was held to be jointly and severally liable in respect of its participation in a cartel and ordered to pay a fine.

In support of its action the applicant alleges breach of Article 81 EC, Article 253 EC, and Article 23(2) of Regulation No 1/2003, as well as infringement of the principle of care, the principle that reasons must be given, and the principle of equal treatment.

The applicant first submits that the Commission has misunderstood the applicant's defence with regard to its conduct both before and after 1997. While the applicant does not deny that it took part in the cartel, it points out that, prior to 1997, it was entirely dependent on its then parent company. After 1997, however, it was independent and its intentions altered gradually but fundamentally.

The applicant goes on to submit that the Commission proceeds on the basis of an erroneous appraisal of the facts with regard to the applicant's participation in the 'Valveplast', 'Benelux' and 'Teppema' groups, as also with regard to its participation in the 'Belgium' and 'Block Bags' groups. The applicant claims that the Commission accepted a number of conclusions which were negligent and inaccurate in regard to several forms of conduct. The applicant also points out that the Commission failed to take any account of the fact that the 'Belgium' and 'Block Bags' groups were terminated prior to 1997.

Furthermore, the applicant alleges that the Commission erred in its appraisal of the facts relating to the determination of geographical markets. The applicant points out in this regard that it has no turnover in Spain and only a minimal turnover in France.

The applicant also criticises the Commission on the ground that it did not apply the leniency notice to the applicant and that it failed to treat certain facts indicated by the applicant as amounting to mitigating circumstances.

With regard to the determination of the basic amount of the fine, the applicant disputes that the individual market shares were determined on the basis of turnover achieved instead of tonnage, the application of differentiated treatment in categories on the basis of market share and the expression of that differentiation in categories, as well as the application of the basic amount of the fine to each category as determined.

The applicant concludes that the Commission was wrong to decide that the applicant and Kendrion N.V. constituted an economic unit, on which ground Kendrion was unjustly fined as a result of a breach committed by the applicant.

Action brought on 21 February 2006 — Harry's Morato v OHIM

(Case T-52/06)

(2006/C 96/35)

Language of the case: Italian

Parties

Applicant: Harry's Morato SpA (Altavilla Vicentina, Italy) (represented by: Niccoló Ferretti, Giovanni Casucci, Fabio Trevisan, lawyers)

Defendant: Office for Harmonisation in the Internal Market (OHIM)

Other party to the proceedings before the Board of Appeal: Ferrero OhG mbH

Form of order sought

The applicant claims that the Court should:

— amend decision R 600/2005-1 of the First Board of Appeal of 16 December 2005;

— call on the OHIM to immediately register the trade mark 'Morato' further to the application for registration No 1 849 439 and subsequent restriction, in the absence of any real subjective impediment and in any case in view of the fact that it does not conflict with the trade mark 'MORATO', and order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark 'Morato' (application for registration No 1 849 439), for goods in Class 30.

Proprietor of the mark or sign cited in the opposition proceedings: FERRERO OHG mbH.

Mark or sign cited in opposition: German word mark 'MORETTO' (No 39 707 273), for goods in Class 30.

Decision of the Opposition Division: Opposition allowed and refusal of the application for registration.

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

Pleas in law: Lapse of the trade mark 'MORETTO' on grounds of lack of use, and the incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 (risk of confusion).

Action brought on 22 February 2006 — Kendrion v Commission

(Case T-54/06)

(2006/C 96/36)

Language of the case: Dutch

Parties

Applicant: Kendrion N.V. (Zeist, Netherlands) (represented by: P. Glazener and C.C. Meijer, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— set aside in whole or in part the decision addressed to the applicant, *inter alios*;

— set aside or reduce the fine imposed on the applicant;

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

Pleas in law and main arguments

The applicant is challenging the Commission Decision of 30 November 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case No COMP/F/38.354 — Industrial bags), in which the applicant was held to be guilty of infringing the rules on competition and ordered to pay a fine.

In support of its action the applicant alleges breach of Article 81 EC, Article 253 EC and Article 15(2) of Regulation No 1/2003, on the ground that the operative part of the decision is inconsistent with its grounds. The applicant submits that, while it is not accused in the grounds of the contested decision of individual participation in the breach, it is accused in the operative part of breaching Article 81 EC.

The applicant goes on to submit that there has been a breach of Article 81 EC, Article 253 EC and Article 23(2) of Regulation No 1/2003 by reason of the fact that the Commission wrongly assumed that the applicant and Fardem Packaging B.V. formed a single economic unit, with the result that the applicant was unjustly fined as a result of a breach by Fardem Packaging.

The applicant submits that the Commission also breached Article 81 EC, Article 253 EC and Article 23(2) of Regulation No 1/2003 and infringed general principles of law, including the duty of care, the prohibition of arbitrary action, and the principles of equality and proportionality.

The applicant goes on to submit that the Commission held the applicant liable for a breach committed by Fardem Packaging, contrary to other Commission decisions in which the parent company was not held liable. Furthermore, the applicant, in its capacity as parent company, incurred a fine in excess of that for which the subsidiary, which committed the breach, was held jointly and severally liable. The applicant claims further that it was treated in a manner different to the other parent companies held jointly and severally liable for breaches committed by their subsidiaries. The fine imposed on the applicant also amounts, it argues, to an infringement of the principle of proportionality and the duty of care.

The applicant concludes by alleging a breach of the guidelines for the calculation of fines, in particular as Article 5(b) of those guidelines was not applied. The applicant submits that the Commission failed to take proper account of the specific characteristics of the undertaking.

Action brought on 22 February 2006 — RKW v Commission

(Case T-55/06)

(2006/C 96/37)

Language of the case: German

Parties

Applicant: RKW AG Rheinische Kunststoffwerke (Worms, Germany) (represented by: H.-J. Hellmann, lawyer)

Defendant: Commission of the European Communities