

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