

Moreover, the applicants contend that the Commission breached Article 253 EC as the contested decision does not provide any statement of reasons for imposing an additional amount of EUR 2.04 million on the applicants Aquatis France and Simplex Amaturen + Fittings.

Fifthly, the applicants submit that the Commission violated Article 2 of Regulation 1/2003 ⁽¹⁾ and the principle of equality of arms by shifting the burden of proof on the applicants by relying entirely on leniency statements and by refusing to use its fact-finding powers. Furthermore, the applicants contend that the Commission violated Article 11(2) of Regulation 773/2004 ⁽²⁾ by including in the contested decision objections which were not formulated against the applicants in the Statement of Objections.

⁽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).

⁽²⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ 2004 L 123, p. 18).

Action brought on 15 December 2006 — Pegler v Commission

(Case T-386/06)

(2007/C 20/51)

Language of the case: English

Parties

Applicant: Pegler Ltd (Doncaster, United Kingdom) (represented by: R. Thompson, QC, and A. Collinson, solicitor)

Defendant: Commission of the European Communities

Form of order sought

- Annul Articles 1 and 3 of the Decision COMP/F-1/38.121 in respect of the applicant; and
- annul Article 2(h) of the decision in so far as it imposes a fine jointly and severally on the applicant.
- Alternatively, order that the fine imposed pursuant to Article 2(h) of the decision is reduced to EUR 5.2 million; and

- the fine for which the applicant is made jointly and severally liable pursuant to Article 2(h) is reduced to EUR 1.7 million.
- In either case, the defendant should be ordered to bear the costs of this appeal.

Pleas in law and main arguments

The applicant seeks the partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 in Case COMP/F-1/38.121 — Fittings, by which the Commission found that the applicant, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information.

In support of its application, the applicant submits that the Commission has not taken account of factual documentary evidence from the applicant and that the contested decision should have been addressed exclusively to the applicant's former parent company Tomkins for the following reasons.

Concerning the period from 31 December 1988 to 20 January 1989 the Commission has, according to the applicant, imposed liability on the applicant simply by virtue of its acquisition on 20 January 1989 of the name 'Pegler Ltd' and by virtue of the existence of an agency relationship with the Tomkins group company FHT Holdings Ltd ('FHT') in circumstances where the applicant did not acquire any of the underlying assets, employees or liabilities and remained dormant, receiving no remuneration in its capacity as agent for FHT.

Concerning the period from 20 January 1989 to 29 October 1993 the applicant submits that the Commission has imposed liability on the applicant for acts that could only have been carried out as agent for FHT, in circumstances where FHT owned all of the underlying assets, employees or liabilities of the 'Pegler' business.

The Commission has, according to the applicant, failed to identify a clear addressee for the contested decision and has instead addressed its decision in respect of the same facts to two different undertakings.

The applicant contends, moreover, that the Commission has, inconsistently with the principle of equality of treatment, with Article 23 of Regulation 1/2003 ⁽¹⁾ and with the Commission's fining guidelines ⁽²⁾, imposed on two different undertakings joint and several liability for payment of a fine calculated without reference to their individual circumstances but rather on the individual circumstances of only one of them, i.e. Tomkins.

Alternatively, the applicant submits that the Commission failed to comply with the fining guidelines, its own consistent practice and the principles of non-discrimination and equality of treatment in calculating the fine for which the applicant is held liable by reference to the individual circumstances of a different undertaking, Tomkins. The applicant further alleges that the Commission committed an error in calculating the fine.

- (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).
- (²) Commission Notice of 14 January 1998 entitled 'Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty' (OJ 1998 C 9, p. 3).

Action brought on 20 December 2006 — Inter-IKEA v OHIM (representation of a pallet)

(Case T-387/06)

(2007/C 20/52)

Language of the case: English

Parties

Applicant: Inter-IKEA Systems BV (Delft, Netherlands) (represented by: J. Gulliksson, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

- Annul the decision of the First Board of Appeal of 26 September 2006 in Case R 353/2006-1;
- order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a pallet consisting of an elongated rectangular platform or base and an equally elongated flange, ornamented with square holes, which are both at a 90 degree angle to each other, for goods and services in classes 6, 7, 16, 20, 35, 39 et 42 — application No 4 073 763

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(b) of Council Regulation No 40/94 as the trade mark is sufficiently distinctive to be registered.

Action brought on 20 December 2006 — Inter-IKEA v OHIM (representation of a pallet)

(Case T-388/06)

(2007/C 20/53)

Language of the case: English

Parties

Applicant: Inter-IKEA Systems BV (Delft, Netherlands) (represented by: J. Gulliksson, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

- Annul the decision of the First Board of Appeal of 26 September 2006 in Case R 354/2006-1;
- order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a pallet consisting of an elongated rectangular platform or base and an equally elongated flange, ornamented with round holes, which are both at a 90 degree angle to each other, for goods and services in classes 6, 7, 16, 20, 35, 39 et 42 — application No 4 073 731

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(b) of Council Regulation No 40/94 as the trade mark is sufficiently distinctive to be registered.

Action brought on 20 December 2006 — Inter-IKEA v OHIM (representation of a pallet)

(Case T-389/06)

(2007/C 20/54)

Language of the case: English

Parties

Applicant: Inter-IKEA Systems BV (Delft, Netherlands) (represented by: J. Gulliksson, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)