

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, 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 agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging commercial information relating to prices, competitors and customers.

In support of its application, the applicant submits that the Commission:

- committed an error of appreciation by rejecting the evidence that the applicant's holding of all the shares of the company Kaučuk was of a purely financial nature or, alternatively, committed a manifest error of appreciation by rejecting evidence which demonstrated that Kaučuk acted on the market as an autonomous entity, without any intervention by the applicant in Kaučuk's sales and marketing policy concerning emulsion styrene butadiene rubber; and
- erred in law by imputing the same conduct twice to different entities, i.e. to Kaučuk and to Kaučuk's shareholder, the applicant.

The rest of the pleas in law and main arguments raised by the applicant are identical or similar to those raised in Case T-44/07, *Kaučuk v Commission*.

Action brought on 21 February 2007 — ratiopharm GmbH v OHIM (BioGeneriX)

(Case T-47/07)

(2007/C 82/104)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented by Rechtsanwalt S. Völker)

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

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 20 December 2006 in appeal No. R1047/2004-4 concerning Community trade mark application No. 001701762.
- Order the Office for Harmonisation in the Internal Market to pay its own costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark BioGeneriX for goods and services in the classes 5, 35, 40 and 42 (Application No. 1 701 762).

Decision of the Examiner: Refusal to register.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No. 40/94 ⁽¹⁾, on the basis that the trade mark applied for demonstrates the minimum distinctive character required and that there is no specific need for availability.

⁽¹⁾ Council Regulation No. 40/94 of 20 December 1993 on the Community trade mark (OJ 1994, L 11, p. 1).

Action brought on 21 February 2007 — ratiopharm v OHIM (BioGeneriX)

(Case T-48/07)

(2007/C 82/105)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented by S. Völker, lawyer)

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

Form of order sought

The applicant claims that the Court should

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 December 2006 in Case R 1048/2004-4 concerning the application for Community trade mark No 002603124;
- order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.