

Form of order sought

In light of their submissions, the applicants respectfully request the Court:

- to declare in accordance with Article 232 EC that the Commission has failed to act by not having delivered a decision on the applicants' complaint lodged with the Commission on 22 April 2004;
- to order the Commission to pay the costs incurred by the applicants in the proceedings;
- to take such further action as the Court may deem appropriate.

Pleas in law and main arguments

By means of their application, the applicants initiate an action under Article 232 EC, claiming that the Commission failed to take a definitive decision on their complaint initially filed on 22 April 2004, followed by an invitation to act, lodged on 27 November 2006, with regard to an alleged abuse of dominance by Deutsche Post under Article 82 EC.

The applicants sustain that they have a legitimate interest to bring such a complaint in accordance with the requirement of Article 7(2) of Council Regulation 1/2003⁽¹⁾ and are directly and individually concerned by the Commission's failure to act. In fact, the applicants claim to be affected by the excessive pricing of Deutsche Post in the downstream market, both as a consumer as well as a competitor.

The applicants further submit that in accordance with the Commission Notice on the handling of complaints under Article 81 and 82 EC⁽²⁾, the Commission is required, upon receipt of a complaint that Article 82 EC has been infringed, either to initiate a procedure against the subject of the complaint or to adopt a definitive decision rejecting the complaint, after having given the complainant the opportunity to comment. However, the applicants claim that although they have submitted their comments on the preliminary rejection of the complaint within the given time-limit, the Commission did not take any definitive decision, in breach of Community law.

Finally, the applicants contend that, considering the circumstances of the case, the period of approximately three years that has lapsed during which they have repeatedly urged the Commission to take action is sufficiently long to enable it to take a definitive decision. In particular, the period of 18 months that has lapsed since the applicants submitted their final observations, is according to the applicants more than reasonable to enable the Commission to close the third stage of investigation.

⁽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 L 1, 4.1.2003, p. 1-25).

⁽²⁾ OJ C 101, 27.4.2004, p. 65-77.

Action brought on 26 March 2007 — Dada v OHIM — Dada (DADA)

(Case T-101/07)

(2007/C 129/30)

Language in which the application was lodged: Italian

Parties

Applicant: Dada SpA (Florence, Italy) (represented by: D. Caneva and G. Locurto, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dada Srl

Form of order sought

- annul the decision of the First Board of Appeal of OHIM of 12 June 2007 in Case R-1342/2005-1, notified to Dada SpA on 25 June 2007, and consequently allow application for registration No 1 903 111 lodged by Dada SpA also in respect of the services referred to in Class 42 of the Nice Agreement;
- order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Dada SpA

Community trade mark concerned: Figurative mark composed of the word DADA reproduced in capital letters on a rectangular black background surmounted by the image of an atom; registration No 1 903 111 in respect of services in Class 42.

Proprietor of the mark or sign cited in the opposition proceedings: DADA Srl

Mark or sign cited in opposition: Italian descriptive mark DADA, in respect of services in Classes 35, 37, 38 and 42, and the company name DADA, used in trade and commerce in Italy to denote the following activities: 'business management; business administration; office functions, real-estate affairs, telecommunications, education, training, legal services, computer programming'.

Decision of the Opposition Division: Opposition upheld and refusal of the application for registration for the services at issue.

Decision of the Board of Appeal: Contested decision upheld and dismissal of the appeal.

Pleas in law: Insufficient evidence of use of the national mark pleaded by the opponent and absence of likelihood of confusion.