## Action brought on 7 December 2007 — Behring & Söhne v Commission

**(Case T-445/07)**

(2008/C 37/46)

*Language of the case: German*

### Parties

*Applicant:* Behring & Söhne GmbH & Co. KG (Wuppertal, Germany) (represented by: P. Niggemann and K. Gaßner, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

— the annulment of Commission Decision C(2007) 4257 final of 19 September 2007 (COMP/E-1/39.168 — Haberdashery: fasteners);

— in the alternative, the reduction of the fine imposed on the applicant in the contested decision to a symbolic penalty or to an amount that is in any event appropriate;

— that the defendant be ordered to pay the costs.

### Pleas in law and main arguments

The applicant challenges Commission Decision C(2007) 4257 final of 19 September 2007 in Case COMP/E-1/39.168 — Haberdashery: fasteners. In the contested decision, a fine was imposed on the applicant and other undertakings for infringement of Article 81 EC. In the Commission's view, the applicant participated in the coordination of price increases, together with the exchange of confidential information as to prices and the implementation of price increases on the markets for 'other fasteners' and application machines.

The applicant relies on four pleas in law in support of its claim.

It submits, first, that the contested decision infringes its right to a fair hearing, since it had no opportunity to comment on a series of meetings held in relation to the so-called 'Basle group' and the 'Wuppertal group', on which the Commission based its allegations relating to the coordination of price increases and the exchange of confidential information as to prices and the implementation of price increases.

Secondly, it claims that the alleged infringements of the law relating to cartels have ceased, since the applicant ended its participation in the 'Basle group' and the 'Wuppertal group' as early as the beginning of 1997.

The applicant also maintains that there was no infringement of Article 81 EC, since the Commission has failed to adduce the requisite proof of the applicant's participation in any arrangements.

Lastly, the applicant claims that the calculation of the fine is factually incorrect. In that regard, it alleges in particular that the findings of the defendant, both as to the length of the purported infringement by the applicant, and as to the seriousness of the infringement, are incorrect and that the amount of the fine is disproportionate.

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## Action brought on 7 December 2007 — Royal Appliance International v OHIM — BSH Bosch und Siemens Hausgeräte (Centrixx)

**(Case T-446/07)**

(2008/C 37/47)

*Language in which the application was lodged: German*

### Parties

*Applicant:* Royal Appliance International GmbH (Hilden, Germany) (represented by: K.-J. Michaeli and M. Schork, 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:* BSH Bosch und Siemens Hausgeräte GmbH (Munich, Germany)

### Form of order sought

— To annul the decision of the Fourth Board of Appeal of OHIM of 3 October 2007 in Case R 572/2006-4;

— To order the defendant to pay the applicant's costs and those of the proceedings.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* the applicant.

*Community trade mark concerned:* the word mark 'Centrixx' for goods in Class 7 (application No 3 016 227).

*Proprietor of the mark or sign cited in the opposition proceedings:* BSH Bosch und Siemens Hausgeräte GmbH.

*Mark or sign cited in opposition:* the German word mark 'sensixx' for goods in Class 7 (No 30 244 090).

*Decision of the Opposition Division:* rejection of the opposition.

*Decision of the Board of Appeal:* annulment of the decision of the Opposition Division and refusal of the application for registration of the mark.