

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

Other party to the proceedings before the Board of Appeal: Medion AG (Essen, Germany)

Form of order sought

- The decision of 2 October 2007 of the Second Board of Appeal in Case R 141/2007-2 should be set aside in its entirety and the case should be remitted to the OHIM for registration of the applicant's trade mark;
- the respondent should be ordered to pay the costs of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The Community word mark 'LIFE BLOG' for goods and services in class 9, 38 and 41 — application No 3 564 366

Proprietor of the mark or sign cited in the opposition proceedings: Medion AG

Mark or sign cited: The national and international word marks 'LIFE' and 'LIFETEC', for goods and services in classes 1, 7, 8, 9, 10, 11, 16, 21, 28, 37, 38, 41 and 42; the national and international word mark 'LIFESAT' for goods in Class 9 and the national word mark 'Lifesign' for goods in Classes 9, 14 and 16

Decision of the Opposition Division: Rejected the application for registration partially

Decision of the Board of Appeal: Upheld the opposition and dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94.

Action brought on 19 December 2007 — Visa Europe and Visa International Service Association v Commission

(Case T-461/07)

(2008/C 51/91)

Language of the case: English

Parties

Applicants: Visa Europe Ltd (London, United Kingdom) and Visa International Service Association (Wilmington, United States) (represented by: S. Morris, QC, H. Davies, Barrister, A. Howard, Barrister, V. Davies, Solicitor and H. Masters, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

- Annul the decision in its entirety; alternatively
- annul Article 2 of the decision in its entirety, or in the alternative, reduce the fine there stated, as appropriate; and
- order the Commission to pay the costs.

Pleas in law and main arguments

By means of their application Visa Europe and Visa International Service Association ('Visa') seek annulment under Article 230 EC of Commission Decision C(2007) 4471 final, dated 3 October 2007 relating to a proceeding under Article 81 EC (Case COMP/D1/37860 — Morgan Stanley/Visa International and Visa Europe) on one hand with regard to the finding that Visa had infringed Article 81 EC and Article 53 EEA, by refusing to admit Morgan Stanley Bank International Limited ('Morgan Stanley') to membership of Visa Europe prior to 22 September 2006, due to the fact that it owned and operated a competing card system and, on the other hand, with regard to the imposition of a fine of EUR 10,2 million to the applicants.

Visa raises three pleas in law in relation to the Commission's finding of infringement. In particular, it submits that the Commission's conclusion that the non-admission of Morgan Stanley to Visa membership constituted an appreciable restriction to competition falling under Article 81(1) EC is vitiated by manifest errors of law and claims that the Commission failed to establish the necessary elements in support of that conclusion.

- (a) First, it is submitted that the Commission applied the wrong legal and economic test for the application of the aforementioned provision, namely that there was 'scope for further competition' and reached, thus, the wrong factual and economic assessment regarding the alleged effects of the non-admission of Morgan Stanley. In fact, according to Visa, Morgan Stanley was not prevented from entering the relevant market ('the UK acquiring market').
- (b) Second, it is claimed that the Commission infringed an essential procedural requirement by changing its case on restrictive effect at the stage of the decision without giving Visa an opportunity to respond to the new formulation of the case.
- (c) Third, even if Morgan Stanley was prevented from entering the UK acquiring market, it is argued that there were no sufficient anti-competitive effects.

In relation to the fine that has been imposed, Visa raises the following pleas in law under Article 229 EC:

- (a) In accordance with the application of fundamental principles of Community law to the particular circumstances of the case and the genuine uncertainty that existed as to the illegality of the non-admission of Morgan Stanley, the Commission ought not to have imposed a fine on Visa at all. In fact, Visa considers that there was no justification for the fine imposed, given that the agreement in question had been formally notified to the Commission pursuant to Regulation (EEC) No 17/62 ⁽¹⁾ and that the power to impose a fine under Regulation (EC) No 1/2003 ⁽²⁾ only arose because of the Commission's serious delay in the administrative procedure.
- (b) In the alternative, the Commission committed, according to Visa, various errors of law and assessment regarding the level of the fine that it could lawfully impose on the applicants. On that basis, Visa contends that a fine of EUR 10,2 million was manifestly excessive and disproportionate, taking no account of the reasonable doubt as to the illegality of Visa's conduct.

Finally, Visa claims that the Commission was only entitled to impose a fine on Visa for the period for which the evidence was established that Morgan Stanley was prevented from entering the UK acquiring market. Even if Visa's earlier refusal to admit Morgan Stanley to Visa membership could have made a difference to the conditions of competition in the relevant market, this could not have been the case beyond that period and therefore, the Commission, in line with its 1998 Fining Guidelines, should not have applied a duration multiplier.

⁽¹⁾ EEC Council Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ 13, p. 204).

⁽²⁾ 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, p. 1).

Action brought on 19 December 2007 — GALP Energia España and Others v Commission

(Case T-462/07)

(2008/C 51/92)

Language of the case: English

Parties

Applicants: GALP Energia España SA (Madrid, Spain), Petróleos de Portugal SA (Lisbon, Portugal) and GALP Energia, SGPS, SA (Lisbon, Portugal) (represented by: M. Slotboom, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Primarily, to set aside the contested decision; or
- alternatively, to set aside Articles 1, 2 and 3 of that decision as far as the applicants are concerned; or
- alternatively, to set aside Article 2 of the decision to the extent that a fine has been imposed on the applicants; or
- alternatively to reduce the fine that has been imposed on the applicants in Article 2 of the decision;
- to order the Commission to bear the costs of the present proceedings.

Pleas in law and main arguments

By means of their application, the applicants request annulment, in whole or partially, of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 EC (Case COMP/38710 — Bitumen Spain) by which the Commission found that the applicants, among other undertakings, participated in a complex of agreements and concerted practices in the penetration bitumen business which covered the territory of Spain and which consisted in market sharing agreements and price coordination.

In support of their claims the applicants put forward the following pleas in law:

- the Commission, in violation of the principle of sound administration enshrined in Article 41 of the Charter of Fundamental Rights of the European Union, failed to institute a fair, careful and impartial investigation, substituting its own independent investigation of the relevant facts by vague and incorrect accusations made by other leniency applicants;
- the Commission allegedly breached Article 81 EC and Article 23(2) of Regulation 1/2003 ⁽¹⁾ through manifest errors of appraisal and misapplication of the law, by finding that GALP Energia España took part in customer allocation, in monitoring and compensation mechanisms, or in any of the price arrangements, as described in the contested decision;
- the Commission further breached Article 81 EC and Article 23(2) of Council Regulation (EC) No 1/2003 through its determination of the duration of the alleged breach of Article 81 EC by concluding that GALP Energia España's involvement in the prohibited practices lasted until October 2002. In addition, the applicants submit that the Commission violated the abovementioned provisions in determining the level of the fine imposed on them;