

*Decision of the Opposition Division:* Opposition upheld for all the goods and services in classes 9, 38 and 41, as well as for 'advertising' in class 35

*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision and rejection of the opposition in its entirety

*Pleas in law:* Without contesting the operative part of the contested decision, the applicant contends that the reasoning of the Board of Appeal infringes Council Regulation No 40/94 and the rules of law relating to its application.

**Action brought on 15 February 2008 — E.I. du Pont de Nemours and Others v Commission**

(Case T-76/08)

(2008/C 116/40)

*Language of the case: English*

**Parties**

*Applicants:* E.I. du Pont de Nemours and Company (Wilmington, United States), DuPont Performance Elastomers LLC (Wilmington, United States), DuPont Performance Elastomers SA (Geneva, Switzerland) (represented by: J. Boyce and A. Lyle-Smythe, Solicitors)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul Article 1(b) of the decision insofar as it finds that E.I. DuPont was a party to the infringement;
- annul Article 2(b) of the decision insofar as it finds E.I. DuPont liable to pay a fine;
- reduce the fines imposed on the applicants pursuant to Article 2(b) of the decision; and
- order the Commission to bear its own costs and those incurred by the applicants.

**Pleas in law and main arguments**

The applicants seek partial annulment of Commission Decision C(2007) 5910 final of 5 December 2007 (Case COMP/F/38.629 — Chloroprene Rubber), by which the Commission found that the applicants, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by participating in a single and continuing agreement and/or concerted practice in the chloroprene rubber sector.

In support of their application, the applicants submit that the Commission committed manifest errors of assessment of the facts, erred in law and failed to provide adequate reasoning for its decision:

- in holding the applicant E.I. DuPont liable for the involvement of the joint venture DuPont Dow Elastomers in the cartel for the period after the applicant E.I. DuPont had transferred its entire elastomers business, including chloroprene rubber, to DuPont Dow Elastomers;
- in imposing a fine on E.I. DuPont for the period prior to the transfer of its elastomer activities to DuPont Dow Elastomers, when the Commission was in fact time-barred from doing so;
- in not having demonstrated a legitimate interest in issuing a decision against E.I. DuPont in this case;
- in not having shown that Bayer and DuPont Dow Elastomers had reached an agreement or an understanding over the closures of plants;
- in using a multiplier for duration of 6.5 equating six years and six full months, when the duration of the involvement of DuPont Dow Elastomers was only of six years and one full month;
- in not granting the applicants the maximum available leniency reduction of 30 %; and
- in finding that an employee of DuPont Dow Elastomers participated in the cartel.

**Action brought on 18 February 2008 — Dow Chemical v Commission**

(Case T-77/08)

(2008/C 116/41)

*Language of the case: English*

**Parties**

*Applicant:* The Dow Chemical Company (Midland, United States) (represented by: D. Schroeder and T. Graf, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annul the decision insofar as it relates to the applicant;
- in the alternative, substantially reduce its fine; and
- order the Commission to pay the applicant's legal and other costs and expenses in relation to this matter.