infringement alleged against the applicants, and treated the applicants, by comparison with other involved parties, including Shell, in a discriminatory manner without objective grounds.

(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 2003 L 1, p. 1).

Action brought on 15 December 2008 — Hansen & Rosenthal and H & R Wax Company Vertrieb v Commission

(Case T-544/08)

(2009/C 55/57)

Language of the case: German

Parties

Applicants: Hansen & Rosenthal KG (Hamburg, Germany) and H & R Wax Company Vertrieb GmbH (Hamburg, Germany) (represented by: J. Schulte and A. Lober, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested Decision C(2008) 5476 final of 1 October 2008 in Case COMP/39.181 — Candle Waxes of the Commission of the European Communities in so far as it relates to the applicants;

— in the alternative, cancel the fine imposed on the applicants or, in the further alternative, reduce that fine;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicants are challenging Commission Decision C(2008) 5476 final of 1 October 2008 in Case COMP/39.181 — Candle Waxes, in which the defendant found that certain undertakings, including the applicants, had participated in a continuing agreement and/or concerted practice in the paraffin waxes sector, contrary to Article 81(1) EC and Article 53 of the Agreement on the European Economic Area.

The applicants rely on six pleas in law in support of their action.

By the first plea, the applicants assert that the decision is vitiated by a serious lack of reasoning. For that reason, it should be annulled by reason of infringement of Article 81 EC and consequential breach of the applicants' rights of defence.

By the second plea, the applicants claim that the conditions for an infringement of Article 81 EC have not been met. The applicants and the other paraffin producers did not in any way have a common goal. The applicants did not participate in anti-competitive agreements or concerted practices. The dispatch of letters detailing price increases therefore did not serve to give effect to anti-competitive agreements or consultations, but rather took place within the context of relations with suppliers. Furthermore, no restriction of competition resulted otherwise from the exchange of information.

By way of alternative submissions, the applicants take issue, in their third to sixth pleas in law, with the level of the fine imposed on them.

— The Commission, they submit, unlawfully applied Guidelines on fines which were adopted only in 2006, even though the alleged offence was terminated in early 2005. In so doing, the Commission breached the principle that the administration is bound by its own acts, the prohibition of retroactive effect and the principle of legal certainty.

— By their fourth plea in law, the applicants submit that the Commission erred in its calculation of the turnover relevant to the fine. In the relevant years 2002 to 2004, the applicants achieved a turnover with paraffin products of only EUR 18,97 million. The Commission, however, based its calculation of the fine on a turnover of EUR 26 million.

— By their fifth plea, the applicants assert that the Commission also incorrectly assessed the severity of the offence. The fixing, at 17 %, of the proportion of the turnover relevant to the offence and of the entry fee is at variance with the principle of proportionality. Furthermore, insufficient account was taken of the size and importance of the undertakings.

— By their sixth plea, the applicants contend that the Commission erred in its determination of the duration of the infringement alleged against the applicants. The Commission, they argue, has failed to prove that the applicants participated in the alleged restriction of competition for the entire period in respect of which they stand accused.

Action brought on 12 December 2008 — X-Technology Swiss v OHIM (representation of a sock)

(Case T-547/08)

(2009/C 55/58)

Language in which the application was lodged: German

Parties

Applicant: X-Technology Swiss GmbH (represented by A. Herbertz and R. Jung, lawyers)

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