

Mark or sign cited in opposition: the international registration of the word mark 'TONOPAN' for goods in Class 5 (No 227 508)

Decision of the Opposition Division: Opposition dismissed

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 ⁽¹⁾, since there is no likelihood of confusion between the trade marks at issue.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 20 August 2009 — Electrabel v Commission

(Case T-332/09)

(2009/C 267/129)

Language of the case: French

Parties

Applicant: Electrabel (represented by: M. Pittie and P. Honoré, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- declare the application admissible and well founded;
- as the main plea, annul Articles 2 and 3 of the contested decision or at least reduce the amount of the fine imposed on the applicant under Article 2 of the contested decision;
- in any event, order the Commission to pay all the costs incurred by the applicant in connection with these proceedings.

Pleas in law and main arguments

By the present proceedings, the applicant seeks primarily the annulment of Commission Decision C(2009) 4416 final of 10 June 2009, by which the Commission found that the applicant had infringed Article 7(1) of Regulation No 4064/89 ⁽¹⁾ by implementing a concentration having Community dimension before notifying it, and before it was declared compatible with the common market. The applicant seeks, in the alternative, the annulment or at least the reduction of the amount of the fine imposed on it by Article 2 of the contested decision.

In support of its action the applicant puts forward four pleas:

- incorrect classification of the infringement on account, in particular, of a confusion between the infringement consisting in the failure to notify the Commission and the infringement consisting in the advance implementation of the concentration and, therefore, a contradiction in the reasoning between the classification of the infringement and the substantive assessment of its duration;
- infringement of Articles 3(3) and 14(2) of Regulation No 4064/89 and the guidelines on the definition of concentration, by holding that there was an acquisition of de facto sole control of the Compagnie Nationale du Rhône by Electrabel on 23 December 2003. The applicant claims that the Commission has ignored relevant aspects of the case, in particular, the fact that the Compagnie Nationale du Rhône is a public company; that it has applied the definition of de facto sole control that it has established in its guidelines on the definition of concentration incompletely and erroneously and (iii) has committed several manifest errors of assessment relating, in particular, to the governance bodies of the Compagnie Nationale du Rhône;
- that the Commission's power to impose a fine in this case is time-barred and
- a breach of the principles of proportionality, sound administration and the principle of the protection of legitimate expectations by imposing a fine on the applicant of such a large amount for an infringement which had no effect on competition.

⁽¹⁾ Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1; republished in its entirety in OJ 1990 L 257, p. 13, as rectified).

Action brought on 20 August 2009 — Poland v Commission

(Case T-333/09)

(2009/C 267/130)

Language of the case: Polish

Parties

Claimant: Republic of Poland (represented by: M. Dowgiewiczyk, Agent)

Defendant: Commission of the European Communities