

— In its appraisal, the Commission wrongly failed to take account of the fact that one of the purposes of the modification of the repayment terms was to bring those terms further into line with market-compliant repayment terms.

Second, the applicant submits that the Decision is at variance with the principle of the duty of care in that the Commission failed to collect the necessary information concerning the relevant facts.

Third, the applicant takes the view that the Decision infringes the principle that reasons must be given, inasmuch as the Commission failed to adduce conclusive reasons for its view that the modification of the repayment terms constituted additional aid.

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**Action brought on 29 January 2010 — Reagens v Commission**

(Case T-30/10)

(2010/C 80/64)

*Language of the case: English*

**Parties**

*Applicant:* Reagens SpA (San Giorgio di Piano, Italy) (represented by: B. O'Connor, L. Toffoletti, D. Gullo and E. De Giorgi, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Annul Commission's decision of 11 November 2009 No C(2009) 8682 final (Case COMP/38.589 — Heat Stabilisers) in relation to Tin Stabilisers in totality or insofar as it concerns the applicant;
- find that the time-limits provided for in Article 25 of Regulation No 1/2003 apply so as to preclude the imposition of a fine on the applicant;
- in the alternative, to find that the Commission has erred in the fixing of a fine of EUR 10 791 000 on the applicant and if necessary to adjust that fine to a level that is appropriate with the limited nature of the applicant's possible infringement of Article 101 TFEU after 1996;

— open a measure of enquiry into the application of paragraph 35 of the Guidelines on fines in relation to Chemson and Baerlocher and in relation to all submissions by addressees of the Tin Stabilisers decision after the notification of the Statement of Objections;

— order the Commission to pay the costs of this application.

**Pleas in law and main arguments**

By means of its application, the applicant seeks partial annulment of Commission's decision of 11 November 2009 No C(2009)8682 final insofar as it held the applicant liable for an infringement of Articles 81 EC and 53 EEA (Case COMP/38.589 — Heat Stabilisers), and that it imposes a fine to it.

In support of its submissions, the applicant puts forward the following pleas in law:

The applicant claims, first, that the Commission made a manifest error in the assessment of the facts in relation to Tin stabilisers, insofar that is found that the applicant participated in an infringement of Article 81 EC (now Article 101 TFEU) after the 1996/1997 period.

Secondly, the applicant submits that the Commission made a manifest error in the application of Article 25 of Regulation (EC) No 1/2003 <sup>(1)</sup> to the facts of the Tin stabiliser market and in particular, in finding that the time-limits provided in that Article were met. According to the applicant, the failure to prove an infringement post 1996/1997 means that a decision to fine the applicant is time barred by virtue of the five year or the ten year rules provided for in that Article.

Third, the applicant contends that the Commission breached the principles of sound administration and the applicant's legitimate expectations that it would conduct an investigation to the best of its ability in a rigorous and diligent manner and that it would not ignore evidence of competition. The applicant, moreover, claims that the Commission acted in breach of its rights of defence in that it did not adequately examine the evidence provided by the applicant in response to the statement of objections and in the hearing of the parties nor did it allow the applicant re-access to the non-confidential file for the investigation.

Fourth, the applicant submits that the Commission acted in breach of the principle to treat all undertakings equally before the law in that it misapplied the Guidelines on the setting of fines <sup>(2)</sup>. The applicant further submits that the Commission breached the principle of proportionality in that the fine imposed on the applicant was disproportionate in relation to all other addressees of the Tin Stabilisers decision and, in particular, Baerlocher.

Fifth, the applicant alleged that the Commission acted so as to distort competition in the common market in breach of Article 101 TFEU to the extent that it misapplied the Guidelines on fines

Finally, the applicant argues that the Commission acted in breach of the principle of sound administration in not conducting the investigation in a diligent and timely manner, as well as prejudiced the applicant's right of defence in not continuing the investigation during the period of the 'Akzo legal privilege' applications <sup>(3)</sup> to the General Court.

<sup>(1)</sup> 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)

<sup>(2)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2)

<sup>(3)</sup> Judgment of the General Court of 17 September 2007, in Joined Cases T-125/03 and T-253/03, Akzo Nobel Chemicals et Akros Chemicals/Commission, [2007], ECR II-3523

**Action brought on 22 January 2010 — Ella Valley Vineyards v OHIM — Hachette Filipacchi Press (ELLA VALLEY VINEYARDS)**

(Case T-32/10)

(2010/C 80/65)

*Language in which the application was lodged: French*

**Parties**

*Applicant:* Ella Valley Vineyards (Adulam) Ltd (Jerusalem, Israel) (represented by: C. de Haas, lawyer)

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

*Other part to the proceedings before the Board of Appeal of OHIM:* Hachette Filipacchi Presse SA (Levallois-Perret, France)

**Form of order sought**

- annul the decision of the First Board of Appeal of OHIM of 11 November in all its provisions because it infringed Article 8(5) of Regulation (EC) No 207/2009;
- order OHIM to pay the costs of ELLA VALLEY VINEYARDS pursuant to Articles 87 to 93 of the Rules of Procedure.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Ella Valley Vineyards (Adulam) Ltd.

*Community trade mark concerned:* the figurative mark 'ELLA VALLEY VINEYARDS' for goods in Class 33 (Application for registration No 3 360 914).

*Proprietor of the mark or sign cited in the opposition proceedings:* Hachette Filipacchi Presse SA.

*Mark or sign cited in opposition:* French word mark and the Community word mark 'ELLE' for goods in Class 16 (Community trade mark No 3 475 365).

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

*Decision of the Board of Appeal:* Annulment of the decision of the Opposition Division.

*Pleas in law:* Infringement of Article 8(5) of Regulation (EC) No 207/2009 because the public concerned will not make any link between the marks at issue and because the use of the mark 'ELLA VALLEY VINEYARDS' does not take unfair advantage of the reputation of the earlier 'ELLE' marks

**Action brought on 28 January 2010 — ING Groep v Commission**

(Case T-33/10)

(2010/C 80/66)

*Language of the case: English*

**Parties**

*Applicant:* ING Groep NV (Amsterdam, Netherlands) (represented by: O. Brouwer, M. Knappen and J. Blockx, lawyers)