

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 ⁽²⁾. 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 ⁽³⁾ to the General Court.

⁽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)

⁽²⁾ 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)

⁽³⁾ Judgment of the General Court of 17 September 2007, in Joined Cases T-125/03 and T-253/03, Akzo Nobel Chemicals et Akcros 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. Knapien and J. Blockx, lawyers)