

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

**Action brought on 27 January 2010 — CECA v Commission**

(Case T-24/10)

*Other party to the proceedings before the Board of Appeal of OHIM:* Marc O'Polo International GmbH (Stephanskirchen, Germany)

(2010/C 100/67)

*Language of the case:* English

### Form of order sought

— Annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 November 2009 in Case R 1666/2008-4;

— order the defendant to pay the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Esprit International

*Community trade mark concerned:* a figurative mark representing the letter 'e' on a trouser pocket for goods in Classes 18 and 25 (Application No 5 089 859)

*Proprietor of the mark or sign cited in the opposition proceedings:* Marc O'Polo International GmbH

*Mark or sign cited in opposition:* in particular, a German figurative mark No 30 303 672 representing the letter 'e' for goods in Classes 18 and 25

*Decision of the Opposition Division:* Opposition upheld

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009,<sup>(1)</sup> since there is no likelihood of confusion between the opposing marks

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

### Parties

*Applicant:* CECA SA (La Garenne Colombes, France) (represented by: J. Joshua, Barrister, E. Aliende Rodríguez, lawyer)

*Defendant:* European Commission

### Form of order sought

— annul Articles 1(1) and (2) of Commission decision C(2009) 8682 of 11 November 2009 insofar as it relates to the applicant and, in any event, annul Article 1(1) insofar as it finds that the applicant participated in an infringement in tin stabilisers between 16 March 1994 and 31 March 1996;

— cancel the fines imposed on the applicant in Article 2;

— if the Court does not annul the fines in their entirety, substantially reduce them pursuant to its full jurisdiction;

— order the Commission to pay the costs.

### Pleas in law and main arguments

By means of the present application, annulment is sought of Commission's decision of 11 November 2009 in Case COMP/38.589 — Heat stabilisers which finds that the applicant participated in two separate infringements of Article 81 EC (now Article 101 TFEU), one in tin stabilisers and one in ESBO, and imposes a fine for each product.

The applicant puts forward the following pleas in law in support of its application:

First, it is submitted that, on a proper application of Article 25 of Regulation (EC) No 1/2003<sup>(1)</sup>, the Akzo litigation<sup>(2)</sup> did not suspend the running of time and the Commission's power to impose fines was time-barred for both infringements under

the ten year 'double limitation' rule. The applicant claims that the Commission erred in law by finding that the period the Akzo proceedings were before the Court operated to suspend the running of time and wrongly concluded that the ten year limit provided for in Article 25(5) of the abovementioned Regulation could be extended in the present case.

Second, the applicant claims that the Commission has demonstrated no legitimate interest in making a declaratory finding of infringements in respect of which it had no power to impose fines. In fact, the applicant submits that Article 7 of Regulation (EC) No 1/2003 allows the Commission to make a declaratory finding that an infringement has been committed if it does not impose a fine, provided that the it is demonstrated that the Commission has a legitimate interest.

Third, and independently of the two first pleas, the applicant requests the Court to annul the declaratory finding enshrined in Article 1(1) of the contested decision on the basis of which it had participated in an infringement in tin stabilisers during the period 16 March 1994 — 31 March 1996 and contends that the Commission has demonstrated no legitimate interest in making such a finding.

Fourth, and if the Court does not annul the fines in their entirety, the applicant contends that the Commission has not proved duration beyond 23 February 1999 and that therefore the fine imposed for the second cartel period should be reduced to reflect a shorter duration of the infringements.

<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> 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 27 January 2010 — BASF Specialty Chemicals and BASF Lampertheim v Commission

(Case T-25/10)

(2010/C 100/68)

*Language of the case: German*

### Parties

*Applicants:* BASF Specialty Chemicals Holding GmbH (Basel, Switzerland), BASF Lampertheim GmbH (Lampertheim, Germany) (represented by: F. Montag and T. Wilson, lawyers)

*Defendant:* European Commission

### Form of order sought

- Annul Article 1(1)(q) and Article 1(2)(q) of Decision C(2009) 8682 final of 11 November 2009 (Case COMP/38.589 — Heat stabilisers) concerning BASF Specialty Chemicals Holding GmbH, Article 1(1)(r) and Article 1(2)(r) of the decision concerning BASF Lampertheim GmbH as well as Article 2(15) and (36) of the decision concerning both applicants;
- in the alternative, reduce appropriately the amount of the fine imposed on the applicants in Article 2(15) and (36) of the decision;
- order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

The applicants have brought an action against Commission Decision C(2009) 8682 of 11 November 2009 in Case COMP/C38.589 — Heat stabilisers. In the contested decision, the Commission imposed fines on the applicants and other undertakings in respect of infringements of Article 81 EC and — since 1 January 1994 — of Article 53 of the EEA Agreement. According to the Commission, the applicants participated in a series of agreements and/or concerted practices in the market for tin stabilisers and in the market for ESBO/esters in the European Economic Area which consisted in the fixing of prices, the sharing of markets through the allocation of supply quotas, the sharing and allocation of customers as well as the exchange of sensitive commercial information, especially concerning customers, production volumes and quantities supplied.

In support of their action, the applicants have submitted three pleas in law.

First, the applicants invoke an infringement of Article 25 of Regulation (EC) No 1/2003, <sup>(1)</sup> since the defendant's right to impose fines on the applicants had become time-barred. Contrary to the Commission's view, the applicants take the view that the provisions of Article 25(6) of Regulation No 1/2003 regarding the suspension of the limitation period do not apply to the applicants.

Second, the applicants claim that the contested decision breaches Article 101(1) TFEU in conjunction with Article 23(2) of Regulation No 1/2003, since for the most part, the infringements may not be imputed to BASF Specialty Chemicals Holding GmbH, so that no fine should have been imposed on the undertaking in this regard. In this respect, the applicants also submit that the Commission thereby infringed Article 23(2) of Regulation No 1/2003 when it set the fine for BASF Lampertheim GmbH, since in determining the 10 % ceiling for the fine for periods during which BASF Specialty Chemicals Holding GmbH was not liable, it should have taken into account the turnover of BASF Lampertheim GmbH only.