Form of order sought

— Annul Commission Decision C(2009) 8682 final of 11 November 2009 (Case COMP/38.589 — Heat stabilisers) in so far as it concerns the applicant;

— in the alternative, reduce the amount of the fine imposed on the applicant in Article 2(17) and (38) of the decision;

— order the Commission to pay the cost of the proceedings.

Pleas in law and main arguments

The applicant has brought an action against Commission Decision C(2009) 8682 final of 11 November 2009 (Case COMP/38.589 — Heat stabilisers). In the contested decision, fines were imposed on the applicant and other undertakings on the grounds of an infringement of Article 81 EC and — since 1 January 1994 — of Article 53 of the EEA Agreement. According to the Commission, the applicant participated in 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 its action, the applicant puts forward nine pleas in law.

First, the applicant claims that the Commission was wrong to assume that the cartel relating to tin stabilisers existed until 21 March 2000 and relating to ESBO/esters until 26 September 2000. The applicant submits in this respect that the cartel ceased its activity in the middle of 1999.

As the second plea in law, the applicant submits that the Commission's right to impose a fine on the applicant had become time-barred. The applicant claims that the binding limitation period of ten years ended in the middle of 1999. Further, the period of limitation was not suspended during the proceedings in Joined Cases T-125/03 and T-253/03 *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission*.

By way of a third plea in law, the applicant claims that there has been an infringement of Article 81 EC and the principle of legality since, in its capacity as a consulting company, sanctions could not be imposed on the applicant under Article 81 EC. In this respect, the applicant submits that the wording of Article 81 EC does not comprise its conduct, and that, at the moment the offence was committed, such an interpretation of Article 81 EC could at any rate not be envisaged.

In the alternative, the applicant criticises, by way of the fourth, fifth and sixth plea, errors made by the Commission in respect of the assessment of the fine. In detail, the applicant submits that no more than a symbolic fine could have been imposed on the applicant since it could not be envisaged, at the moment the offence was committed, that Article 81 EC would be interpreted to also comprise consulting companies. Further, the Guidelines on the method of setting fines [1] have been infringed, since the fine should not have been set at a flat-rate, but calculated in relation to the fee which the applicant received for its services. Furthermore, the Commission infringed the ten-percent ceiling provided for in the second sentence of Article 23(2) of Regulation (EC) No 1/2003 [2] because a single offence was committed only. In this respect, the applicant submits further that the fines imposed threaten its existence and are incompatible with the whole purpose of that ceiling.

In the context of the three final pleas, the applicant claims that procedural errors were made. The applicant claims an infringement of the principle that cases must be disposed of within a reasonable time (seventh plea), and criticises that the applicant was informed too late of the investigation opened against it (eighth plea) and that the contested decision was not properly notified to the applicant (ninth plea).

[1] 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)

[2] 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 26 January 2010 — Hairdreams v OHIM — Bartmann (MAGIC LIGHT)

(Case T-34/10)

(2010/C 100/71)

Language in which the application was lodged: German

Parties

Applicant: 'Hairdreams' HaarhandelsgmbH (Graz, Austria) (represented by: G. Kresbach, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Rüdiger Bartmann (Gladbeck, Germany)

Form of order sought

— Amend the contested decision of the Fourth Board of Appeal of OHIM of 18 November 2009 in Case R 656/2008-4 so that the applicant's appeal of 22 April 2008 is upheld in its entirety and that the defendant is ordered to pay the costs of the opposition proceedings, the appeal and the present action;

— in the alternative, annul the contested decision and refer it back to OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: Hairdreams Haarhandelsgmbh

Community trade mark concerned: the word mark 'MAGIC LIGHT' for goods in Classes 3, 8, 10, 21, 22, 26 and 44 (Application No 5 196 597)

Proprietor of the mark or sign cited in the opposition proceedings: Rüdiger Bartmann

Mark or sign cited in opposition: the German word mark 'MAGIC LIFE' No 30 415 611 for goods in Class 3

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 [1] on the ground that the Board of Appeal erred in law in its assessment of the likelihood of confusion

[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 29 January 2010 — Bank Melli Iran v Council

(Case T-35/10)

(2010/C 100/72)

Language of the case: English

Parties

Applicant: Bank Melli Iran (Teheran, Iran) (represented by: L. Defalque, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul paragraph 4, section B, of the annex to Council Regulation (EC) No 110/2009 concerning restrictive measures against Iran as well as the decision of the Council of 18 November 2009;

— order that the Council pays the applicant's costs of this application.

Pleas in law and main arguments

In the present case the applicant seeks the partial annulment of Council Regulation (EC) No 1100/2009 of 17 November 2009 [1] implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran [2] and repealing Decision 2008/475/EC [3] in so far as the applicant is included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision.

The applicant seeks the annulment of paragraph 4, section B, of the Annexe, in so far as it relates to the applicant and puts forward the following pleas in law in support of its claims.

First, the applicant argues that the contested regulation and decision were adopted in violation of the applicant's rights of defence and, in particular, its right to have a fair hearing since it did not receive any evidence or documents to support the allegations of the Council. It further states that the additional allegations to the 2008 decision are vague, unclear and impossible for the applicant to respond since it was refused the right to be heard.

The applicant also submits that the defendant infringed its obligation to provide sufficient motivation.