

- Article 1(1)(h) and (2)(h) of Commission Decision No C(2009) 8682 final of 11 November 2009 in so far as those two provisions state that Elf Aquitaine infringed Article 81 EC and Article 53 EEA respectively (i) in the tin stabilisers sector between 16 March 1994 and 31 March 1996 and between 9 September 1997 and 21 March 2000 and (ii) in the ESBO/esters sector between 11 September 1991 and 26 September 2000;
- in the further alternative:
 - annul, on the basis of Article 263 TFEU, Article 1(1)(h) of Commission Decision No C(2009) 8682 final of 11 November 2009 inasmuch as it states that Elf Aquitaine infringed Article 81 EC and Article 53 EEA in the tin stabilisers sector between 16 March 1994 and 31 March 1996;
 - and reduce, on the basis of Article 261 TFEU:
 - the fines of EUR 3 864 000 and EUR 7 154 000 imposed jointly and severally on Arkema France, CECA and Elf Aquitaine by Article 2(11) and (28) respectively of Commission Decision No C(2009) 8682 final of 11 November 2009; and
 - the fines of EUR 2 704 800 and EUR 5 007 800 imposed on Elf Aquitaine by Article 2(13) and (30) respectively of Commission Decision C(2009) 8682 final of 11 November 2009;
- in any event, order the European Commission to pay all of the costs.

Pleas in law and main arguments

In the present case, the applicant is seeking the annulment of Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/39.859 — Heat Stabilisers) concerning cartels in the markets for tin stabilisers and ESBO/esters heat stabilisers throughout the EEA involving price-fixing, the allocation of markets and the exchange of sensitive commercial information or, in the alternative, the cancellation or the reduction of the fine imposed on the applicant.

The action is based, primarily, on two pleas for the annulment of the whole of the decision. The first plea alleges infringement

of the applicant's rights of defence. In the second plea, the applicant alleges that the decision is vitiated by a number of errors of law relating to liability for infringements committed by its subsidiary Arkema and its lower-tier subsidiary CECA.

The action is also based on two pleas in the alternative, and two pleas in the further alternative. In the third plea (in the alternative), the applicant alleges a number of errors of law which must lead, at the very least, to the cancellation of the four fines which were imposed on it under Article 2 of the decision. In the fourth plea (in the alternative), the applicant considers that were the Court to uphold the third plea, it should also annul Article 1 of the decision in so far as it concerns the applicant. In the fifth plea (in the further alternative), if the Court were to reject the first part of the third plea concerning the infringement of the limitation rules, the applicant considers that, at the very least, Article 1(1)(h) of the decision should be annulled inasmuch as it states that the applicant infringed Article 81 EC and Article 53 EEA in the tin stabilisers sector between 16 March 1994 and 31 March 1996. In the sixth plea (in the further alternative), the applicant submits that if the Court were to reject the two principal pleas and the third plea submitted in the alternative, the infringement of its rights of defence should, at the very least, lead to a reduction of the four fines which were imposed on it.

Action brought on 2 February 2010 — SIMS — Ecole de ski internationale v OHIM — SNMSF (esf école du ski français)

(Case T-41/10)

(2010/C 100/76)

Language in which the application was lodged: French

Parties

Applicant: Syndicat international des moniteurs de ski — Ecole de ski internationale (SIMS — Ecole de ski internationale) (Albertville, France) (represented by: L. Raison-Rebufat, 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: Syndicat national des moniteurs du ski français (SNMSF) (Meylan, France)

Form of order sought

- vary and annul in its entirety Decision R 235/2009-1 of 11 November 2009 of the First Board of Appeal of OHIM concerning the action for annulment brought by the applicant against Decision 2557 C of the Cancellation Division of OHIM to reject its application for a declaration of invalidity of the Community trade mark No 4 624 987 on the ground of an infringement of the provisions of Article 7(1) (h) and (g) of Regulation (EC) No 207/2009;
- declare that the trade mark No 4 624 987 is invalid on the dual ground of:
 - infringement of Article 6b(1)(a) and (c) of the Paris Convention to which Article 7(h) of Council Regulation No 207/2009 of 26 February 2009 on the Community trade mark expressly refers;
 - infringement of Article 52 of the Regulation referring to Article 7(1)(g) of Council Regulation No 207/2009 of 26 February 2009 on the Community trade mark;
- declare the revocation of mark No 4 624 987 on the ground of the infringement of Article 51(1)(c) of Regulation No 207/2009 of the Council of 26 February 2009 on the Community trade mark.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark 'esf école du ski français' for goods and services in Classes 25, 28 and 41 (Community trade mark No 4 624 987).

Proprietor of the Community trade mark: Syndicat national des moniteurs du ski français.

Applicant for the declaration of invalidity: Syndicat international des moniteurs de ski — Ecole de ski internationale (SIMS — Ecole de ski internationale)

Decision of the Cancellation Division: Dismiss the application for a declaration of invalidity.

Decision of the Board of Appeal: Dismiss the appeal of the applicant

Pleas in law: infringement of Article 7(1)(h) and (g) and Article 51(1)(c) of Regulation No 207/2009.

Action brought on 29 January 2010 — Elementis e.a. v Commission

(Case T-43/10)

(2010/C 100/77)

*Language of the case: English***Parties**

Applicants: Elementis plc, Elementis Holdings Ltd, Elementis UK Ltd and Elementis Services Ltd (London, United Kingdom) (represented by: T. Wessely, A. de Brousse, E. Spinelli, lawyers and A. Woods, Solicitor)

Defendant: European Commission

Form of order sought

- Annul the decision of the European Commission of 11 November 2009 No C(2009) 8682 in Case COMP/38589 — Heat Stabilisers insofar as it relates to the applicants;
- in the alternative, annul or substantially reduce the amount of the fines imposed on the applicants pursuant to the decision;
- order the defendant to pay the costs of the proceedings, including costs incurred by the applicants associated with payment in whole or in part of the fine;
- take any other measures that the General Court considers to be appropriate.

Pleas in law and main arguments

By means of their application, the applicants seek the annulment, pursuant to Article 263 TFEU, of Commission's decision of 11 November 2009 No C(2009) 8682 in Case COMP/38589 — Heat Stabilisers, by which a number of undertakings, including the applicants, were held liable for an infringement of Articles 81 EC (now 101 TFEU) and 53 EEA, by participating in two cartels that affected, respectively, the tin stabilisers sector and the ESBO/esters stabiliser sector throughout the EEA.