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.

The pleas in law and main arguments raised by the applicants are the following:

First, the applicants submit that the Commission committed an infringement of law in adopting a fining decision against the applicants in breach of the rules on limitation contained in Articles 25(5) and 25(6) of Council Regulation (EC) No 1/2003 (hereinafter 'Regulation No 1/2003') on the implementation of the rules on competition laid down in Articles 81 and 82 EC (now 101 and 102 TFEU) [1]. According to Article 25(5) of Regulation No 1/2003, the absolute limitation period beyond which the Commission may not impose sanctions for antitrust violations is 10 years from the date that the infringement ceased. Accordingly, the applicants put forward that the decision taken over 11 years after the end of the applicants' infringement (2 October 1998) was adopted in violation of the said provision. Further, the applicants submit that the Commission's position on the legality of the fine despite the expiry of the ten year period rests on its *erga omnes* interpretation of the suspension of the limitation period provided for in Article 25(6) of Regulation No 1/2003, which, according to the applicants is flawed.

Second, the applicants claim that the Commission infringed the applicants' rights of defence as the excessive duration of the fact-finding phase of the investigation undermined the ability of the applicants to effectively exercise their rights of defence in this procedure.

Third, the applicants contend that the Commission committed manifest errors in calculating the fine imposed on the applicants by wrongfully basing the fines imposed i) in relation to the pre-joint venture period; and ii) for deterrence, on the turnover achieved by the Akcros joint venture rather than on the turnover achieved by the applicants. According to the applicants, the fines should be reduced by 50 %.

Fourth, the applicants submit that the Commission committed manifest errors of law and infringed the principles of legal certainty, personal responsibility and proportionality by failing to specify the amount of the fine (imposed jointly and severally on the applicants) which is to be paid by the applicants.

[1] OJ 2003 L 1, p. 1

Action brought on 28 January 2010 — GEA Group v Commission

(Case T-45/10)

(2010/C 100/78)

Language of the case: German

Parties

Applicant: GEA Group (Bochum, Germany) (represented by: A. Kallmayer, I. du Mont and G. Schiffers, lawyers)

Defendant: European Commission

Form of order sought

— Annul Article 1(2) of the Decision, in so far as it finds that the applicant infringed Article 101(1) TFEU (formerly Article 81(1) EC) and Article 53(1) of the EEA Agreement;

— annul Article 2 of the decision, in so far as it imposes a fine on the applicant;

— in the alternative, shorten the duration of the infringement allegedly committed by the applicant pursuant to Article 1(2) and reduce the fine imposed on the applicant in Article 2 of the decision;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant has 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 applicant 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 applicant participated in a series of agreements and/or concerted practices 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. The applicant is jointly and severally liable together with two other undertakings that are legal successors of those undertakings that are alleged to have participated in anti-competitive arrangements.