

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'RESTORE' for goods in Class 10

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law:

Infringement of the right to be heard as the Board of Appeal referred in its decision to evidence which was not adduced by the applicant;

Infringement of Article 7(1)(c) of Regulation (EC) No 207/2009 ⁽¹⁾ as the mark applied for is not a term which directly describes the goods covered by the application;

Infringement of Article 7(1)(b) of Regulation (EC) No 207/2009 as the mark applied for has the required distinctive character.

⁽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 2 September 2010 — Duravit and Others v Commission

(Case T-364/10)

(2010/C 288/108)

Language of the case: German

Parties

Applicants: Duravit AG (Hornberg, Germany); Duravit SA (Bischwiller, France); and Duravit BeLux BVBA (Overijse, Belgium) (represented by: R. Bechtold, U. Soltész and C. von Köckritz, lawyers)

Defendant: European Commission

Form of order sought

— Pursuant to Article 263(4) TFEU, declare Articles 1(1), 2 and 3 of the decision of the European Commission of 23 June 2010, C(2010) 4185 final, in Case COMP/39092 — Bathroom fittings and fixtures, to be invalid in so far as they concern the applicants;

— In the alternative, reduce the amount of the fine imposed on the applicant under Article 2(9) of the decision;

— Pursuant to Article 87(2) of the Rules of Procedure of the General Court, order the Commission to pay the applicants' costs.

Pleas in law and main arguments

The applicants have brought this action against Commission decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. By the contested decision, fines were imposed on the applicants and other undertakings for infringement of Article 101 TFEU and Article 53 EEA. According to the Commission, the applicants participated in a continuous agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

In support of their action, the applicants submit nine pleas in law.

In their first plea, the applicants allege that the Commission has not produced sufficient evidence to prove that the applicants participated in price-fixing or other anti-competitive conduct. The Commission misunderstood the burden and standard of proof required to establish an infringement of Article 101 TFEU in Commission proceedings, and imposed excessive requirements on the applicants in the Commission proceeding in relation to the provision of positive proof and the burden of proof.

In their second plea, the applicants claim that the Commission held the applicants responsible for the whole of the infringement in relation to the relevant goods on account of their participation in alleged 'cartel meetings' of a German umbrella Association for the relevant goods, without establishing that the applicants had taken part in discussions about the relevant goods. In that regard, the applicants argue that the Commission incorrectly, immediately, and without taking account of the actual business and legal background, categorised the discussions in the German umbrella association as deliberate restrictions on competition.

The applicants further claim, in their third plea, that the Commission has failed to prove anti-competitive conduct on the German sanitary ceramics market. The applicants complain, in that regard, that the Commission unlawfully categorised discussions at a German ceramics association as price-fixing and deliberate restrictions on competition, and that the Commission infringed the applicants' right to a fair and unprejudiced proceeding by making improper incriminating findings on the basis of clearly irrelevant evidence.

In their fourth plea, the applicants claim that they did not participate in price-fixing in France or Belgium. In the view of the applicants, the Commission found, wrongly, that discussions at Belgian and French ceramic associations involved price-fixing and also wrongly assessed the duration of the alleged infringement and thereby misapplied Article 101 TFEU.

In the context of the fifth plea, the applicants claim that the Commission found, incorrectly, that the actions on the market for wardrobe doors, shower partitions and ceramics were a single and continuous infringement, and thereby misapplied Article 101 TFEU. In that respect, the applicants allege that the criteria developed in the case-law for establishing a single and continuous infringement were not met.

For their sixth plea, the applicants claim that the Commission clearly infringed their rights of the defence and their right to an oral hearing under Articles 12 and 14 of Regulation (EC) No 773/2004⁽¹⁾ on account of the excessive length of the proceeding and because of the replacement of all the internal Commission staff taking part in the decisionmaking process after the oral hearing.

In the context of their seventh plea, the applicants claim that the Commission wrongly used its Guidelines on the setting of the fines⁽²⁾ to calculate the amount of the fine, in that, since the entry into force of the Treaty of Lisbon, those guidelines are invalid on the basis that they infringe Article 290(1) TFEU and Article 52(1) of the Charter of Fundamental Rights of the European Union.

In their eighth plea, the applicants claim that the Commission's calculation of the amount of the fine was erroneous, since the Commission did not take account of the low level of the applicants' alleged involvement, but rather assessed as one the gravity of the infringement for all the undertakings concerned. In the applicants' opinion, that breaches the principle of individual responsibility.

Lastly, in the context of the ninth plea, the applicants complain that the level of the fine imposed breaches the principles of proportionality and equal treatment, in that the applicants did not participate in the most serious distortions of competition.

⁽¹⁾ Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 [EC] and 82 [EC] (OJ 2004 L 123, p. 18).

⁽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).

Appeal brought on 1 September 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 22 June 2010 in Case F-78/09, Marcuccio v Commission

(Case T-366/10 P)

(2010/C 288/109)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

- in any event, set aside in its entirety and without exception the order under appeal;
- declare that the action at first instance, in relation to which the order under appeal was made, was admissible in its entirety and without exception;
- uphold in its entirety and without any exception whatsoever the application lodged at first instance by the appellant;
- order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation both to the proceedings at first instance and to the present appeal proceedings;