

Fourth, the applicant claims that when setting the level of the fine, the defendant failed to assess the infringement in proportion to infringements in other cases decided by it, and therefore failed to observe the principle of equal treatment.

Fifth, the applicant complains that the level of the fine is disproportionate because the defendant failed to take into account the applicant's limited capacity to participate.

Sixth, the applicant complains that, in so far as the defendant calculated the fines on the basis of its 2006 Guidelines on fines,⁽²⁾ the contested decision failed to comply with the prohibition on retroactive effect.

Seventh, the applicant claims that Article 23(3) of Regulation No 1/2003 infringes the principle of legal certainty.

Finally, the applicant claims that the fixing of the fine was unlawful because the fine was calculated on the basis of guidelines on fines which give the defendant too much discretion.

⁽¹⁾ 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).

⁽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).

Action brought on 9 September 2010 — Goutier v OHIM — Eurodata (ARANTAX)

(Case T-387/10)

(2010/C 301/72)

Language in which the application was lodged: German

Parties

Applicant: Klaus Goutier (Frankfurt am Main, Germany) (represented by: E.E. Happe, 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: Eurodata GmbH & Co KG (Saarbrücken, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 July 2010 in Case R 126/2009-4, to the extent that the Community trade mark application was, by setting aside the contested decision, rejected in respect of the following services:

Class 35 – Tax consultancy, tax preparation, accounting, auditing, professional business consultancy, business consultancy

Class 36 – Fiscal assessments, mergers and acquisitions, namely financial consultancy with regard to the purchase or sale of companies and company shares;

Class 42 – Provision of legal services, legal research;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Klaus Goutier.

Community trade mark concerned: Word mark 'ARANTAX' for services in Classes 35, 36 and 42.

Proprietor of the mark or sign cited in the opposition proceedings: Eurodata GmbH & Co KG.

Mark or sign cited in opposition: German word mark 'ANTAX' for services in Classes 35, 36, 41, 42 and 45.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Partial setting aside of the decision of the Opposition Division and partial rejection of the Community trade mark application.

Pleas in law: Infringement of Articles 15 and 43 of Regulation (EC) No 207/2009,⁽¹⁾ because proof of use had not been provided, and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, because there is no likelihood of confusion between the marks at issue.

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