

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

### Form of order sought

- Annul the decision of 17 June 2010 of the Second Board of Appeal of OHIM in Case R 892/2010-2 in so far as it dismissed the application for trade mark No 004114864 in respect of goods and services in Classes 9, 35, 36, 37, 38 and 42;
- Order OHIM to pay the costs incurred by the applicant in the proceedings before OHIM and in the present action, pursuant to Article 87 of the Rules of Procedure.

### Pleas in law and main arguments

*Community trade mark concerned:* The word mark 'EURO AUTOMATIC CASH' for goods and services in Classes 9, 35, 36, 37, 38 and 42 — application No 4 114 864.

*Decision of the Examiner:* Refusal of the application for registration.

*Decision of the Board of Appeal:* Partial annulment of the examiner's decision; partial refusal for registration of the trade mark applied for; decision taken subsequent to the General Court's judgment in Case T-15/09 *Euro-Information v OHIM* (EURO AUTOMATIC CASH), judgment of 9 March 2010, not published in the ECR.

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009, as the mark is not descriptive but, on the contrary, is distinctive for all of the goods and services in respect of which registration was refused.

### Action brought on 14 September 2010 — Westfälische Drahtindustrie and Others v Commission

(Case T-393/10)

(2010/C 301/78)

*Language of the case:* German

### Parties

*Applicants:* Westfälische Drahtindustrie GmbH (Hamm, Germany), Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG (Hamm), Pampus Industriebeteiligungen GmbH & Co. KG (Iserlohn, Germany) (represented by: C. Stadler, lawyer)

*Defendant:* European Commission

### Form of order sought

- Annul Article 1(8)(a) and (b) of the Commission's decision in so far as the first and second applicants are thereby found liable for infringement of Article 101 TFEU or Article 53 of the EEA Agreement before 12 May 1997;
- annul Article 2 of the decision in so far as it imposes a fine of EUR 15 485 000 on the first, second and third applicants, jointly and severally, a fine of EUR 30 115 000 on the first and second applicants, jointly and severally, and a fine of EUR 10 450 000 on the first applicant;
- in the alternative, reduce the fine imposed on the applicants under Article 2 of the decision to an appropriate amount;
- order the defendant to pay the costs.

### Pleas in law and main arguments

The applicants contest Commission Decision C(2010) 4387 final of 30 June 2010 in Case COMP/38.344 — Prestressing steel. The contested decision imposed fines on the applicants and other undertakings for infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicants participated in a continuing agreement and/or concerted action in the prestressing steel sector in the internal market and the EEA.

In support of their action, the applicants have submitted eight pleas in law.

By their first plea in law, the applicants allege infringement of Article 25(1)(b) of Regulation (EC) No 1/2003<sup>(1)</sup> as the assumption that the applicants participated in a single and continuing infringement is wrong.

In connection with the second plea in law the applicants allege, in the alternative, infringement of Article 23(3) of Regulation No 1/2003 in view of the failure to observe essential principles applicable to the calculation of fines with respect to the defendant's determination of the duration of the infringement to include the cartel's crisis period.

By their third plea in law, the applicants submit that the defendant infringed Article 23(3) of Regulation No 1/2003 in that, by using the information provided in the application for reduction of the fine against the applicants, the defendant infringed the principle of the protection of legitimate expectations and the principle that the administration is bound by its own acts.

In connection with the fourth plea in law, the applicants allege infringement of Article 23(3) of Regulation No 1/2003 in view of the defendant's many errors of assessment when assessing the gravity of the infringement.

By their fifth plea in law, the applicants complain of infringement of Article 23 of Regulation No 1/2003 and breach of the obligation to state reasons under the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union. They submit in that respect that the defendant arbitrarily departed from the calculation method laid down in the contested decision when determining the fine.

By their sixth plea in law, the applicants submit that the defendant infringed Article 23 of Regulation No 1/2003 by disregarding the limits of its discretionary power and infringing the principle of proportionality when calculating the fine.

In connection with the seventh plea in law, the applicants allege infringement of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, since the defendant failed to give reasons for essential aspects of the contested decision.

Lastly, by their eighth plea in law the applicants complain that the defendant infringed the applicants' right to be heard in accordance with Article 27 of Regulation No 1/2003 and Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, as it did not give the applicants a hearing in respect of certain essential aspects.

<sup>(1)</sup> 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 13 September 2010 — Grebenshikova v OHIM — Volvo Trademark (SOLVO)**

(Case T-394/10)

(2010/C 301/79)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Elena Grebenshikova (St. Petersburg, Russian Federation) (represented by: M. Björkenfeldt, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Volvo Trademark Holding AB (Göteborg, Sweden)

**Form of order sought**

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 June 2010 in case R 861/2010-1; and

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

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'SOLVO', for goods in class 9

*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal

*Mark or sign cited:* United Kingdom trade mark registrations No 747361 of the figurative mark 'VOLVO', for a wide range of goods and services; United Kingdom trade mark registrations No 1552528, No 1102971, No 1552529 and No 747362 of the word mark 'VOLVO', for a wide range of goods and services; Community trade mark registrations No 2361087 and No 2347193 of the word mark 'VOLVO', for inter alia goods and services in classes 9 and 12

*Decision of the Opposition Division:* Rejected the opposition in its entirety

*Decision of the Board of Appeal:* Annulled the decision of the Opposition Division and rejected the trade mark application

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly applied the provisions of this Article; violation by the Board of Appeal of a general principle of EU law regarding equal treatment and violation of Article 1 of the Agreement on the Trade-Related Aspects on Intellectual Property Rights (TRIPS), as well as violation of Article 2 of the Paris Convention for the Protection of Industrial Property.

**Action brought on 14 September 2010 — Stichting Corporate Europe Observatory v Commission**

(Case T-395/10)

(2010/C 301/80)

*Language of the case: English*

**Parties**

*Applicant:* Stichting Corporate Europe Observatory (Amsterdam, the Netherlands) (represented by: S. Crosby, Solicitor, and S. Santoro, lawyer)