

Action brought on 11 January 2011 — Timab Industries and CFPR v Commission

(Case T-14/11)

(2011/C 80/42)

*Language of the case: French***Parties**

Applicants: Timab Industries (Dinard, France) and Cie financière et de participations Roullier (CFPR) (Saint-Malo, France) (represented by: N. Lenoir, lawyer)

Defendant: European Commission

Form of order sought

- annul the decision;
- order the Commission to pay the costs in their entirety.

Pleas in law and main arguments

The applicants seek the annulment of the Commission's decision of 17 November 2010 implicitly refusing access to Commission documents relating to the procedure initiated by the Commission in Case COMP/38.866 concerning a cartel in the European market for animal feed phosphates.

In support of the action the applicants rely on two pleas in law.

1. The first plea in law alleges infringement of the obligation to state reasons in so far as the Commission did not reply to the confirmatory application for access to its decision or decisions fixing the probable ranges of fines as regards the addressees of Decision C(2010) 5004 Final, which was adopted as a result of settlement proceedings.
2. The second plea in law alleges errors of law and manifest errors of assessment in so far as the Commission relied, during the examination procedure in respect of the application for access to the documents, on the first and third indents of Article 4(2) and the second subparagraph of Article 4(3) of Regulation No 1049/2001⁽¹⁾ to justify the refusal of access. The applicants submit that the documents requested:
 - are not opinions, but decisions in respect of which it is not established that communication of them may seriously undermine the decision-making process;
 - do not contain any sensitive commercial data;
 - have no connection with inspections, investigations and audits.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 17 January 2011 — El Corte Inglés v OHIM — BA&SH (ba&sh)

(Case T-23/11)

(2011/C 80/43)

*Language in which the application was lodged: English***Parties**

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: M. López Camba and J. Rivas Zurdo, lawyers)

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

Other party to the proceedings before the Board of Appeal: BA&SH SAS (Paris, France)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 October 2010 in case R 94/2010-2;
- Order the defendant and the other party to the proceedings before the Board of Appeal to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'ba&sh', for goods in classes 3, 14, 18 and 25 — Community trade mark application No 5679758

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Spanish trade mark registration No 2211312 of the figurative mark in colour 'BASS10', for goods in class 3; Spanish trade mark registration No 2140717 of the figurative mark in colour 'BASS10', for goods in class 18; Spanish trade mark registration No 2140718 of the figurative mark in colour 'BASS10', for goods in class 25; Spanish trade mark registration No 2223832 of the figurative mark in colour 'BASS10', for goods in class 14

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Articles 42(2) and 42(3) of Council Regulation (EC) No 207/2009, as the Board of Appeal wrongly concluded that no genuine use for the goods concerned was proved. The applicant also considers that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the concerned trade marks are confusingly similar and as the products designated by the contested trade mark are partially identical and partially similar to those covered by the earlier registrations.