

Form of order sought

- Principally, declare invalid the Commission's letters BUDG/DGA/C4/BM/s746396 of 24 June 2011 and BUDG/DGA/C4/BM/s812886 of 8 July 2011 in their entirety;
- In the alternative, reduce the amount of the sum claimed from the applicants in the Commission's letter BUDG/DGA/C4/BM/s812886 of 8 July 2011 or at the very least annul the late-payment interest in the amount of EUR 31 312 114,58 imposed on Elf Aquitaine, for which Total is jointly liable up to the amount of EUR 19 191 296,03;
- In any event, order the Commission to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the Commission erred in law and breached its obligations by failing, in their regard, to draw the consequences from the judgment of the General Court in Case T-217/06 *Arkema France and Others v Commission* [2011] ECR II-0000, by which the fine imposed on the appellants' subsidiaries in Case COMP/F/38.645 — Methacrylates was reduced. Inter alia, the appellants submit that:

- they should, as parent companies held responsible as such for the cartel, also benefit from the reduction in the fine imposed on their subsidiaries, despite the fact that their own action brought against that decision was dismissed by the judgment of the General Court in Case T-206/06 *Total and Elf Aquitaine v Commission*;
- by the payment made by Arkema SA of the full amount of the fine imposed on the appellants and their subsidiaries by the decision in Case COMP/F/38.645, the Commission received what was due to it and consequently can no longer claim anything from the appellants.

Action brought on 6 September 2011 — Oster Weinkellerei v OHIM — Viñedos Emiliana (Igama)

(Case T-474/11)

(2011/C 319/51)

Language in which the application was lodged: German

Parties

Applicant: Andreas Oster Weinkellerei KG (Cochem, Germany) (represented by: N. Schindler, lawyer)

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

Other party to the proceedings before the Board of Appeal: Viñedos Emiliana, SA (Santiago, Chile)

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 22 June 2011 in Case R 637/2010-2;
- Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to bear its own costs and pay the applicant's costs;
- In the alternative, stay the proceedings until delivery of a legally binding decision in the invalidity proceedings pending before OHIM concerning filing reference 000005716 C.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'Igama' for goods in Class 33.

Proprietor of the mark or sign cited in the opposition proceedings: Viñedos Emiliana, SA.

Mark or sign cited in opposition: Word mark 'GAMMA' for goods in Class 33.

Decision of the Opposition Division: The opposition was upheld.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, since there is no likelihood of confusion between the marks at issue.

Appeal brought on 8 September 2011 by European Commission against the judgment of the Civil Service Tribunal of 28 June 2011 in Case F-55/10, AS v Commission

(Case T-476/11 P)

(2011/C 319/52)

Language of the case: French

Parties

Appellant: European Commission (represented by J. Currall and B. Eggers, Agents)

Other party to the proceedings: AS (Brussels, Belgium)