

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'SLIM BELLY' (application No 8 576 811) for goods and services in Classes 28, 41 and 44

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 as the mark applied for has distinctive character and is not descriptive of the goods and services at issue

Action brought on 13 February 2012 — Oil Turbo Compressor v Council

(Case T-63/12)

(2012/C 98/44)

Language of the case: German

Parties

Applicant: Oil Turbo Compressor Co. (Private Joint Stock) (Teheran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP on restrictive measures against Iran, ⁽¹⁾ in so far as that legal act concerns the applicant;

— Prescribe a measure of organisation of procedure under Article 64 of the Rules of Procedure of the Court, asking the defendant to submit all the documents connected with the contested decision, in so far as they concern the applicant;

— Order the defendant to bear the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law.

1. First plea in law, alleging incorrect assessment of the facts said to underlie the decision

The applicant submits in this regard that the contested decision is factually incorrect. That is the case in particular with regard to the defendant's assumption in point 48 of Annex I to the contested decision that the applicant is affiliated to the EU-designated undertaking Sakhte Turbopomp va Kompessor (SATAK) (a.k.a. Turbo Compressor Manufacturer, TCMFG). The applicant is neither directly nor indirectly involved through a holding company in proliferation-sensitive nuclear activities and/or the development of nuclear weapon delivery systems or other weapons systems. There are therefore no facts which would justify the defendant's decision and the associated interference with the applicant's rights fundamental guaranteed under the Charter of Fundamental Rights of the European Union ('the Charter').

The applicant relies in this regard on interference with its freedom to conduct a business under Article 16 of the Charter and on the right to use and dispose of lawfully acquired property in the European Union under Article 17 of the Charter and the rights to equality and not to be discriminated against under Articles 20 and 21 of the Charter.

2. Second plea in law, alleging infringement of the applicant's right to have its case dealt with fairly and to effective legal protection

The applicant complains in this regard that the reasoning in point 48 of Annex I to the contested decision is general and does not on its own justify the major interference with fundamental rights. The defendant does not refer to the facts or evidence allegedly in its possession. The applicant is not aware of any facts or evidence which justify the contested decision.

3. Third plea in law, alleging infringement of the rule-of-law principle of proportionality

According to the applicant the contested decision also infringes the principle of proportionality because the inclusion of the applicant in Annex II to Decision 2010/413/CFSP bears no apparent relation to the objective of the decision, which is to prevent proliferation-sensitive nuclear activities, the trade in and/or development of nuclear weapon delivery systems or other weapons systems by the Islamic Republic of Iran. The defendant also fails to show that the applicant's exclusion from trade with the European Union is reasonable, in particular the least intrusive measure, in order to obtain the intended objective. The applicant further complains that the major interference with its fundamental rights was obviously not measured against the objective supposedly pursued by the defendant.

4. Fourth plea in law, alleging infringement of the right to the rule-of-law principle that everyone should have a fair hearing

In this regard it is claimed that the defendant failed to provide sufficient reasons for including the applicant in the list in Annex II to Decision 2010/413/CFSP. The defendant thereby failed to comply with the legal obligation to indicate to the applicant what the specific reasons justifying its inclusion actually were. The contested decision was not served on the applicant nor was there any hearing. The applicant's application for access to the case-file has to date not been granted.

(¹) Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP on restrictive measures against Iran (OJ 2011 L 319, p. 71).

Action brought on 15 February 2012 — Henkel and Henkel France v Commission

(Case T-64/12)

(2012/C 98/45)

Language of the case: English

Parties

Applicants: Henkel AG & Co. KGaA (Düsseldorf, Germany) and Henkel France (Boulogne-Billancourt, France) (represented by: R. Polley, T. Kuhn, F. Brunet and E. Paroche, lawyers)

Defendant: European Commission

Form of order sought

- Annul the Decision of the European Commission of 7 December 2011 in Case 'COMP/39579 — Consumer Detergents', pursuant to which the defendant has dismissed the applicants' request to transfer documents produced in case COMP/39579 to the French *Autorité de la Concurrence* with respect to its case 09/0007F concerning the French detergents sector;
- Order the defendant to allow the applicants to rely on the requested documents in the proceedings before the Paris Court of Appeals in which the applicants challenge the decision of the French *Autorité de la Concurrence* of 8 December 2011 (or in proceedings before the *Autorité de la Concurrence*, should the latter decide to reopen its case);
- Order the defendant to pay the applicants' legal and other costs and expenses in relation to this matter; and
- Take any other measures as the Court may consider appropriate.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law, alleging that the defendant unlawfully dismissed the applicants' request to transmit the requested documents or to allow the applicants' use of the requested documents in the French proceedings, thereby infringing the applicants' fundamental rights of defence, as well as its own duties under Article 4(3) TUE.