

2. Second plea in law, alleging that the contested act is unlawful for violations of due process and right of defence. The contested act is based on a report from the European Food Safety Authority ('EFSA') which introduced a new requirement — the submission of a fully validated analytical method — at a very late stage of the evaluation procedure. The applicants submitted the requested data to the Rapporteur, who in turn evaluated it and prepared a conclusion whereby the data were sufficient to address the issue raised by EFSA. However, the Commission disregarded the new data. Moreover, the applicants were not given an opportunity to address the issue due to the Commission's misunderstanding of Commission Regulation (EC) No 33/2008⁽²⁾ concerning the submission of new data.
3. Third plea in law, alleging that the contested act is unlawful because it is disproportionate. Even if it were accepted that the new studies could not be taken into consideration, the Commission could have adopted an inclusion decision with less restrictive measures, such as making it subject to confirmatory data.

⁽¹⁾ Commission Implementing Regulation (EU) No 578/2012 of 29 June 2012 concerning the non approval of the active substance diphenylamine, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ 2012 L 171, p. 2)

⁽²⁾ Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I (OJ 2008 L 15, p. 5)

Action brought on 20 September 2012 — HP Health Clubs Iberia v OHIM — Shiseido (ZENSATIONS)

(Case T-416/12)

(2012/C 355/73)

Language in which the application was lodged: Spanish

Parties

Applicant: HP Health Clubs Iberia, SA (Barcelona, Spain) (represented by: S. Serrat Viñas, lawyer)

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

Other party to the proceedings before the Board of Appeal: Shiseido Company Ltd (Tokyo, Japan)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 June 2012 in Case R 2212/2010-1;
- reject the opposition brought by Shiseido Company Ltd;
- refer the case back to OHIM for it to register the mark in respect of which registration was sought for all the contested services; and
- order the defendant and the other party involved in the case to pay the costs incurred by the applicant in these proceedings and in the earlier proceedings before OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: figurative mark 'ZENSATIONS' for services in Classes 35 and 44 — Community trade mark No 5 778 303

Proprietor of the mark or sign cited in the opposition proceedings: Shiseido Company Ltd

Mark or sign cited in opposition: word mark 'ZEN' for goods and services in Classes 3, 21 and 44

Decision of the Opposition Division: opposition rejected

Decision of the Board of Appeal: appeal upheld

Pleas in law:

- Infringement of the second sentence of Article 75 and Article 76(1) and (2) of Regulation No 207/2009;
- Infringement of Article 8(2)(b) of Regulation No 207/2009

Action brought on 26 September 2012 — Kappa Filter Systems v OHIM (THE FUTURE HAS ZERO EMISSIONS)

(Case T-422/12)

(2012/C 355/74)

Language of the case: German

Parties

Applicant: Kappa Filter Systems GmbH (Steyr-Gleink, Austria) (represented by C. Hadeyer, lawyer)

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