

Pleas in law and main arguments

Applicant for a Community trade mark: Antonio Facchinelli

Community trade mark concerned: Figurative mark containing the word elements 'ANTONIO BACIONE', for goods in Classes 3, 14, 18 and 25 — Community trade mark application No 9 056 037

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

Mark or sign cited in opposition: Figurative mark containing the word element 'erreà' and figurative mark containing two intersecting rhombuses, for goods in Classes 3, 9, 14, 16, 18, 25, 28, 35 and 41

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

— Infringement of Article 8(1)(b) of Regulation No 207/2009

— Infringement of Article 8(5) of Regulation No 207/2009

Action brought on 28 January 2013 — 1. garantovaná v Commission

(Case T-42/13)

(2013/C 79/51)

Language of the case: English

Parties

Applicant: 1. garantovaná a.s. (Bratislava, Slovakia) (represented by: M. Powell, Solicitor, G. Forwood, Barrister, M. Staroň and P. Hodál, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the Commission's letter of 21 December 2012, in Case COMP/39.396 — Calcium Carbide, in so far as it:

— Applies an interest rate of 4.5% to the periods during which the Court had i) suspended the operation of Article 2 of the Commission Decision C(2009) 5791 final of 22 July 2009 in Case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel and gas industries, as regards the applicant, and ii) suspended the obligation on the applicant to provide a bank guarantee in order to avoid the immediate recovery of the fine imposed by Article 2 of that decision;

— Sets the balance outstanding at 25 January 2013, covering the fine and late payment interest, at EUR 20 293 586,60;

— Gives formal notice that the applicant should, at the latest by 25 January 2013, either make a provisional payment of EUR 20 293 586,60 or deposit an acceptable financial guarantee covering this amount.

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission lacked any legal basis to impose interest in respect of the period covered by the Ex Parte Interim Measures Order, as the Ex Parte Interim Measures Order of 20 October 2009 suspended the operation of Article 2 of Decision C(2009) 5791 in so far as it concerned the applicant. As such, the fine did not become 'due' within the meaning of Article 79(c) of the Implementing Rules⁽¹⁾. In accordance with the principle of *accessorium sequitur principale*, interest relating to the fine can only begin to accrue from the date on which the fine is due.

2. Second plea in law, alleging that, as regards the period covered by the Interim Measures Order, the application of the penalty interest rate of 4.5% breached the applicant's legitimate expectations, as the Interim Measures Order of 2 March 2011 suspended the obligation on the applicant to provide a bank guarantee in order to avoid the immediate recovery of the fine imposed on it by Article 2 of Decision C(2009) 5791. This put the applicant in the same position it would have been in, had it provided the bank guarantee. The applicant was therefore entitled to rely on a legitimate expectation, created by the Commission's letter of 24 July 2009 notifying Decision C(2009) 5791, that interest on the fine would be payable at the rate set down in Article 86(5) of the Implementing Rules.

3. Third plea in law, alleging that the application of the penalty interest rate of 4.5% to the periods covered by the interim measures orders deprives the interim measures orders of their practical effect, as the rationale for the two interest rates contained in Articles 86(2)(b) and 86(5) of the Implementing Rules is to incentivise undertakings to provide a bank guarantee, and, conversely, to penalise those that refuse to pay the fine when it becomes due, or to provide an appropriate bank guarantee. The applicant should not be penalised by the imposition of a punitive rate of interest for not providing a bank guarantee, in circumstances when i) the Court has suspended the operation of the fine, and ii) has held that it was objectively impossible for the applicant to provide a bank guarantee.

4. Fourth plea in law, alleging that the application of the penalty interest rate of 4.5 % to the periods covered by the interim measures orders violates the principle of proportionality. It would be disproportionate to penalise the applicant through the application of interest at the rate provided for in Article 86(2)(b) of the Implementing Rules, in circumstances where i) the fine is not enforceable, and ii) the EU judicature has established that it cannot pay the fine or provide a suitable bank guarantee.

(¹) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1), as amended.

Action brought on 29 January 2013 — Donnici v Parliament

(Case T-43/13)

(2013/C 79/52)

Language of the case: Italian

Parties

Applicant: Beniamino Donnici (Castrolibero, Italy) (represented by: V. Vallefucio and J. Van Gysegghem, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should find serious fault on the part of the European Parliament in relation to its decision adopted on 24 May 2007 to the applicant's disadvantage, subsequently annulled by the judgment of the Court of Justice of 30 April 2009 and, thus, order the European Parliament to make good the material and non-material damage suffered or to be suffered by him as a result of that unlawful measure, even on an equitable basis which amounts to EUR 1 720 470, or in such lesser amount as the Court considers appropriate. The applicant claims that the European Parliament should pay the costs.

Pleas in law and main arguments

The applicant in the present proceedings — who is also the applicant in Cases T-215/07 and C-9/08 *Donnici v Parliament* — seeks compensation for the damage suffered as a result of the defendant's refusal to recognise the validity of his mandate as a member of the European Parliament. That decision was subsequently annulled by the Court of Justice of the European Union.

In support of his action, the applicant submits that in the present case all the conditions established by the case-law for a declaration that the institutions of the European Union are non-contractually liable are satisfied; this applies in particular to:

- the unlawfulness of the conduct alleged;
- the requirement for the damage to be real;
- the existence of a causal link, and
- fault on the part of the European Union, or the degree of infringement by it. In that regard, the applicant states that, through the decision giving rise to the present proceedings, the defendant has disregarded in a sufficiently serious manner a rule intended to confer rights on individuals.

Action brought on 29 January 2013 — AbbVie v EMA

(Case T-44/13)

(2013/C 79/53)

Language of the case: English

Parties

Applicants: AbbVie, Inc. (Wilmington, United States); and AbbVie Ltd (Maidenhead, United Kingdom) (represented by: P. Bogaert, G. Berrisch, lawyers, and B. Kelly, Solicitor)

Defendant: European Medicines Agency

Form of order sought

The applicant claims that the Court should:

- Annul the Decision of the European Medicines Agency EMA/748792/2012 of 14 January 2013 granting access to documents from the marketing authorisation dossier of a medicinal product; and
- Order the European Medicines Agency to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Decision violates Article 4(2) of the Transparency Regulation (¹) and the applicants' fundamental rights to the protection of confidential commercial information.
2. Second plea in law, alleging that the Decision violates Article 4(4) of the Transparency Regulation and the principle of good administration.