

In this context it is claimed, *inter alia*, that the statement of reasons in the contested acts is incomprehensible to the applicant, and comprehensible reasons were not communicated separately to the applicant by the defendant. As a result the applicant's rights of defence and its right to effective legal protection have been breached. There has also been a breach of the principle of the right to be heard. The applicant claims that the contested acts were not served on it by the defendant and that there was no hearing of the applicant. Further, it is submitted that the defendant did not correctly assess the circumstances relating to the applicant. The applicant takes the view that it was deprived of a fair trial based on the rule of law, having been unable, in the absence of adequate knowledge, to comment specifically on the relevant allegations and alleged evidence of the Council, or to put forward any contrary evidence in the proceedings.

2. Second plea in law, alleging manifest errors of assessment and breach of the principle of proportionality

In the applicant's view the Council made a manifest error of assessment when it adopted the contested acts. The Council failed adequately and/or correctly to investigate the facts underlying the contested acts. In that context, it is submitted, *inter alia*, that, so far as concerns the applicant, the grounds for adoption of the restrictive measures that are stated in the contested acts are inapplicable. The contested acts also breach the principle of proportionality.

3. Third plea in law, alleging infringement of the rights guaranteed under the Charter of Fundamental Rights of the European Union

Here, the applicant claims that its fundamental rights as guaranteed by the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389) ('the Charter') have been infringed by the contested acts. It invokes, in that regard, breach of the freedom to conduct a business in the European Union (Article 16 of the Charter) and of the right to use its lawfully acquired possessions in the European Union and, in particular, to dispose of them freely (Article 17 of the Charter). Furthermore, the applicant claims breach of the principle of equal treatment (Article 20 of the Charter) and of the principle of non-discrimination (Article 21 of the Charter).

Action brought on 4 March 2013 — El Corte Inglés v OHIM — Baumarkt Praktiker Deutschland (PRO OUTDOOR)

(Case T-127/13)

(2013/C 129/49)

Language in which the application was lodged: Spanish

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: E. Seijo Veiguela 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: Baumarkt Praktiker Deutschland GmbH (Hamburg, Germany)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Second Board of Appeal of the OHIM of 11 December 2012 in Case R 1900/2011-2, in so far as, by dismissing the action brought by the applicant, it confirmed the decision of the Opposition Division to grant in part the Community word mark No 4 782 215 'PRO OUTDOOR';

— order the party or parties opposing this action to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Applicant

Community trade mark concerned: Word mark 'PRO OUTDOOR' for goods and services in Classes 9, 12, 14, 18, 22, 24, 25, 28 and 35

Proprietor of the mark or sign cited in the opposition proceedings: Baumarkt Praktiker Deutschland GmbH.

Mark or sign cited in opposition: Figurative mark with word elements 'OUTDOOR GARDEN BARBECUE CAMPING' for goods and services in Classes 12, 18, 22, 24, 25 and 28

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

- Infringement of Article 60 of Regulation No 207/2009, and Rules 48 and 49 of Regulation No 2868/95
- Infringement of Article 8(1)(b) of Regulation No 207/2009

- there is no consumer or worker exposure to HHPA;
- the assessment of HHPA is based on data which is old and outdated; and
- the assessment did not take into account all relevant data.

Action brought on 28 February 2013 — Polynt and Sitre v ECHA

(Case T-134/13)

(2013/C 129/50)

Language of the case: English

Parties

Applicants: Polynt SpA (Scanzorosciate, Italy); and Sitre Srl (Milan, Italy) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicants claim that the Court should:

- Declare the application admissible and well-founded;
- Partially annul Decision ED/169/2012 of the ECHA concerning the inclusion of cyclohexane-1,2-dicarboxylic anhydride, cis-cyclohexane-1,2-dicarboxylic anhydride and trans-cyclohexane-1,2-dicarboxylic anhydride (collectively referred to as 'HHPA') as Substances meeting the criteria set out in Article 57(f) of Regulation (EC) No 1907/2006 ⁽¹⁾ ('REACH'), in accordance with Article 59 of REACH, as it relates to HHPA and its monomers; and
- Order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error of assessment/law: (i) respiratory sensitizers are not covered by Article 57(f) of REACH and (ii) the ECHA did not provide sufficient justification and evidence in order to demonstrate that HHPA was of 'equivalent concern' to a carcinogen, mutagen or toxicant for reproduction ('CMR'), category 1, since:
 - CMR substances trigger irreversible effects whereas, in the case of HHPA, the effects of respiratory sensitisation are not irreversible;

2. Second plea in law, alleging breach of the rights of defence, as the applicants did not have the opportunity to fully defend their case because of the lack of objective criteria for considering whether a substance is of equivalent concern according to Article 57(f) REACH, especially in the case of a respiratory sensitizer such as HHPA, and because ECHA did not take into account all information available or provided by the industry during the commenting period.
3. Third plea in law, alleging infringement of the principle of proportionality, as the ECHA had a choice of measures with respect to HHPA and by identifying HHPA as Substance of Very High Concern ('SVHC') caused the applicants disadvantages which are disproportionate in relation to the aims pursued.

⁽¹⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 28 February 2013 — Hitachi Chemical Europe and Others v ECHA

(Case T-135/13)

(2013/C 129/51)

Language of the case: English

Parties

Applicants: Hitachi Chemical Europe GmbH (Düsseldorf, Germany); Polynt SpA (Scanzorosciate, Italy); and Sitre Srl (Milan, Italy) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Chemicals Agency (ECHA)