

— order the defendant to pay the costs.

### Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of proportionality

In the applicant's view, the contested decision infringes the principle of proportionality, as the prohibition on the allocation of supplementary allowances on the basis of cases of hardship is incorrect in the light of the objective formulated by the defendant and in addition is completely disproportionate to the disadvantage faced by the applicant. In the alternative on this point the applicant claims that decision 2011/278/EU <sup>(1)</sup> is contrary to European law and is invalid.

2. Second plea in law, alleging infringement of the principle of subsidiarity

In the context of this plea in law, the applicant claims that the contested decision infringes the principle of subsidiarity, according to which the European Union's action must be limited to what is necessary. Contrary to the Commission's argument, the Member States retain a (albeit limited) right to adopt rules on the allocation of allowances. Those rules, the adoption of which remain within the competency of the Member States, include cases of hardship, such as those under Paragraph 9(5) of the German Law on Greenhouse Gas Emissions Trading.

3. Third plea in law, alleging infringement of fundamental rights

Here, the applicant claims that the contested decision infringes its fundamental rights to freedom to conduct a business, freedom to choose an occupation and property, without those infringements being justified by one of the objectives of general interest or the protection of the rights and freedoms of others recognised by the European Union.

<sup>(1)</sup> 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772) (OJ 2011 L 130, p. 1).

**Action brought on 22 November 2013 — Pell Amar Cosmetics v OHIM — Alva Management (Pell amar dr. Ionescu — Calinesti)**

(Case T-621/13)

(2014/C 31/25)

*Language in which the application was lodged: Romanian*

### Parties

*Applicant:* Pell Amar Cosmetics SRL (Băile, Romania) (represented by: E. Grecu, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Alva Management GmbH (Icking, Germany)

### Form of order sought

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) in Case R 388/2013-4;
- order OHIM and Alva Management GmbH to pay the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Pell Amar Cosmetics SRL

*Community trade mark concerned:* the black and white figurative mark containing the word element 'Pell amar dr. Ionescu — Calinesti' (Community trade mark application No 10 109 981)

*Proprietor of the mark or sign cited in the opposition proceedings:* Alva Management GmbH

*Mark or sign cited in opposition:* Community registration No 6 645 071, German registration No 1 161 287, and international registrations Nos 588 232 and 657 169 of the word mark 'PERLAMAR'

*Decision of the Opposition Division:* Opposition upheld in part

*Decision of the Board of Appeal:* Appeal dismissed

*Pleas in law:* Misapplication of Article 8(1)(b) of Council Regulation No 207/2009, since there is no likelihood of confusion between the Community trade mark concerned and the trade mark cited in opposition.

**Action brought on 28 November 2013 — Molda v Commission**

(Case T-629/13)

(2014/C 31/26)

*Language of the case:* German

**Parties**

*Applicant:* Molda AG (Dahlenburg, Germany) (represented by: I. Zenke, M. Vollmer, C. Telschow und A. Schulze, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— annul Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (2013/448/EU, OJ 2013 L 240, p. 27), in so far as Article 1(1) thereof rejects granting the applicant the supplementary quotas requested for the third trading period of the 2013 to 2020 emissions trading on the basis of the hardship clause under Paragraph 9(5) of the German Law on Greenhouse Gas Emissions Trading;

— order the defendant to pay the costs.

**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 infringement of the principle of proportionality

In the applicant's view, the contested decision infringes the principle of proportionality, as the prohibition on the allocation of supplementary allowances on the basis of cases of hardship is incorrect in the light of the objective formulated by the defendant and in addition is completely disproportionate to the disadvantage faced by the applicant. In the alternative on this point the defendant claims that decision 2011/278/EU <sup>(1)</sup> is contrary to European law and is invalid.

2. Second plea in law, alleging infringement of the principle of subsidiarity

In the context of this plea in law, the applicant claims that the contested decision infringes the principle of subsidiarity, according to which the European Union's action must be limited to what is necessary. Contrary to the Commission's argument, the Member States retain a (albeit limited) right to adopt rules on the allocation of allowances. Those rules, the adoption of which remain within the competency of the Member States, include cases of hardship, such as those under Paragraph 9(5) of the German Law on Greenhouse Gas Emissions Trading.

3. Third plea in law, alleging infringement of European rules on State aid

In the context of the third plea in law, the applicant claims that the contested decision infringes the fundamental rules of the European State aid scheme, according to which undertakings which are in financial difficulties and which implement a sustainable restructuring plan, may receive financial support in the form of restructuring aid. According to the applicant, the defendant does not have the right to refuse such aid.

4. Fourth plea in law, alleging infringement of fundamental rights

Here, the applicant claims that the contested decision infringes its fundamental rights to freedom to conduct a business, freedom to choose an occupation and property, without those infringements being justified by one of the objectives of general interest or the protection of the rights and freedoms of others recognised by the European Union.

<sup>(1)</sup> 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772 (OJ 2011 L 130, p. 1).

**Action brought on 28 November 2013 — DK Recycling und Roheisen v Commission**

(Case T-630/13)

(2014/C 31/27)

*Language of the case:* German

**Parties**

*Applicant:* DK Recycling und Roheisen GmbH (Duisburg, Germany) (represented by: S. Altenschmidt, lawyer)