Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 as the Board of Appeal (i) failed to assess the similarity of the trade marks by taking into account the overall impression of the earlier trade mark, and (ii) failed to take into account the interdependence of the relevant factors, in particular the low similarity of the goods when assessing the likelihood of confusion.

Action brought on 29 September 2008 — SOZA v Commission

(Case T-413/08)

(2008/C 301/93)

Language of the case: English

Parties

Applicant: Slovenský ochranný Zväz Autorský pre práva k hudobným dielam (SOZA) (Bratislava, Slovak Republic) (represented by: M. Favart, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC); and

— Order the Commission to pay the costs.

Pleas in law and main arguments

By means of its application the applicant seeks partial annulment of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC) and in particular, of its Article 3, determining that the EEA CISAC (1) members engaged in a concerted practice in violation of Article 81 EC and Article 53 EEA by coordinating the territorial delineations of the reciprocal representation mandates granted to one another in a way which limits a licence to the domestic territory of each collecting society.

In support of its claims the applicant submits that:

(i) the inclusion of territorial delineations in its reciprocal representation agreements is not the result of a concerted practice, and

(ii) in the alternative, if there were a concerted practice on territorial delineations, it would not be restrictive of competition within the meaning of Article 81 EC.

On the basis of its first plea, the applicant submits that the Commission made an error of assessment and infringed Article 81 EC as well as Article 253 EC by determining that the parallel territorial delineation included in the reciprocal representation agreements concluded by the applicant and the other EEA CISAC members is the result of a concerted practice, whereas the decision failed to provide any evidence of such a concerted practice.

On the basis of its second plea, the applicant contends that the alleged concerted practice on territorial delineations is not illegal because it concerns a form of competition that is not worthy of protection. Moreover, the applicant claims that, even if the alleged practice should be considered to restrict competition, it does not infringe Article 81(1) EC because it is necessary and proportionate to a legitimate objective.

(1) International Confederation of Societies of Authors and Composers.

Action brought on 22 September 2008 — Italy v Commission

(Case T-426/08)

(2008/C 301/94)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato)

Defendant: Commission of the European Communities