

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* XXXLutzMarken

*Community trade mark concerned:* figurative mark 'LineaNatura Natur hat immer Stil' for goods in Classes 8, 14, 16, 20, 21, 24, 25 and 27 (Registration No 4 626 693)

*Proprietor of the mark or sign cited in the opposition proceedings:* Natura Selection S.L.

*Mark or sign cited in opposition:* Figurative mark 'natura selection' (Community trade mark No 2 016 384) for goods and services in Classes 3, 14, 16, 20, 25, 35, 38, 39 and 42, and further Community trade marks and Spanish mark comprising the word 'natura', for goods and services in Classes 3, 14, 16, 20, 21, 24, 25, 27, 28, 35, 39 and 42

*Decision of the Opposition Division:* Upholding the opposition

*Decision of the Board of Appeal:* Rejection of the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 <sup>(1)</sup>, since there is no likelihood of confusion between the conflicting marks

<sup>(1)</sup> Council Regulation (EC) No 40/941 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

**Action brought on 13 February 2009 — Saint-Gobain Glass France and Others v Commission**

**(Case T-56/09)**

(2009/C 90/49)

*Language of the case:* French

**Parties**

*Applicants:* Saint-Gobain Glass France SA (Courbevoie, France), Saint-Gobain Sekurit Deutschland GmbH & Co. KG (Aachen, Germany), Saint-Gobain Sekurit France SAS (Thourotte, France) (represented by: B. van de Walle de Ghelcke, B. Meyring, M. Guillaumond and E. Venot, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought <sup>(1)</sup>**

— annul the amended version of the decision of the Commission of the European Communities C(2008) 6815 final of 12 November 2008 relating to a proceeding under Article 81 EC in Case COMP/39.125 — Car glass as adopted by Decision C(2009) 863 final of 11 February 2009, which was notified to the applicants on 13 and 16 February 2009, together with the grounds on which the

operative part of the decision was reached, in so far as the amended version of that decision is addressed to the applicants; alternatively, annul Article 2 thereof;

— in the alternative, to reduce the fine imposed on the applicants in Article 2 of the amended version of the decision as adopted by Decision C(2009) 863 final of 11 February 2009, which was notified to the applicants on 13 and 16 February 2009, to an appropriate amount;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

With the present action, the applicants seek the partial annulment of Commission Decision C(2008) 6815 final of 12 November 2008 in Case COMP/39.125 — Car glass, in which the Commission found that certain undertakings, including the applicants, had infringed Article 81(1) EC and Article 53(1) of the Agreement on the European Economic Area by sharing contracts for the supply of car glass and by coordinating their pricing policies and supply strategies on the European market for car glass.

In support of their action, the applicants rely on eight pleas in law alleging:

— infringement of the right to an independent and impartial tribunal and of the right to respect for the presumption of innocence in so far as the fine was imposed by an administrative authority which holds simultaneously powers of investigation and sanction, and that Regulation No 1/2003 <sup>(2)</sup> is unlawful in so far as it does not provide for that right to an independent and impartial tribunal;

— infringement of the right of the applicants to a fair hearing since the applicants were not given an opportunity by the Commission to comment on the method for calculating the fine pursuant to the 2006 guidelines on fines <sup>(3)</sup>;

— infringement of Article 253 EC since the contested decision is not reasoned to the requisite legal standard in so far as the Commission did not specifically explain on the basis of which sales the turnover in relation to the infringement had been calculated;

— infringement of Article 23(2) of Regulation No 1/2003 and of the principle that penalties are personal and a misuse of powers as the 10% ceiling should have been applied solely to the applicants' turnover and not to the turnover of the Compagnie de Saint-Gobain;

— infringement of the principle of non-retroactivity of penalties in so far as the Commission applied the 2006 guidelines on fines retroactively, which resulted in a significant and unforeseeable increase in the level of the fines, by basing the contested decision on those guidelines despite the fact that they were adopted after the infringement had ended;

- infringement of the principle of proportionality in that the fine imposed was excessive, disproportionate and cannot be justified by the objective of deterrence;
- infringement of Article 23 of Regulation No 1/2003 and failure to state reasons in so far as the Commission is not entitled to base its decision on the two cases of previous infringement which were regarded as relevant in the contested decision, on the ground that neither of those two decisions was addressed to the applicants;
- an error of law and of assessment in the application of Article 23(2)(a) and (3) of Regulation No 1/2003 in that the Commission did not take into account, in calculating the fine, that the applicants had not substantially contested the accuracy of the facts.

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- (<sup>1</sup>) As amended after the action was brought because of a corrigendum to the contested decision adopted by the Commission.
- (<sup>2</sup>) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).
- (<sup>3</sup>) Commission Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

## Action brought on 18 February 2009 — Soliver NV v Commission of the European Communities

(Case T-68/09)

(2009/C 90/50)

*Language of the case: Dutch*

### Parties

*Applicant:* Soliver NV (Roeselare, Belgium) (represented by H. Gilliams and J. Bocken, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

- Annul Article 1 of the Commission Decision of 12 November 2008 in Case COMP/39.125 — Car glass, in so far as it finds that the applicant participated from 19 November 2001 to 11 March 2003 in the infringement established in that decision;
- annul Article 2 of the Commission Decision of 12 November 2008 in Case COMP/39.125 — Car glass, in so far as it imposes a fine of EUR 4 396 000 on the applicant;

- in the alternative, substantially reduce the fine imposed on the applicant;
- in any case, order the Commission to pay the costs of the proceedings.

### Pleas in law and main arguments

In support of its application the applicant pleads infringement of Article 81 EC and Article 53 EEA and of the obligation to state reasons, and a manifestly incorrect assessment of the facts. The applicant submits that the contested decision incorrectly states that between 19 November 2001 and 11 March 2003 the applicant was a party to the infringement found in Article 1 of the contested decision.

Second, the applicant submits that the value of sales figure taken by the Commission is not supported by reasons, is not in accordance with the Guidelines on the setting of fines, does not allow the applicant to defend itself, is contrary to the presumption of innocence, and infringes the principle of equal treatment.

Third, the applicant pleads infringement of the principles of equal treatment and of proportionality, the Guidelines on the setting of fines and the duty to state reasons. When calculating the basic amount of the applicant's fine, the Commission applied an excessively high percentage of the value of its sales.

Fourth, the applicant pleads infringement of the principles of equal treatment and of proportionality and a manifestly incorrect assessment of the facts, by virtue of the fact that the Commission multiplied the applicant's value of sales by the number of years during which the applicant was alleged to be a party to the infringement found in Article 1 of the contested decision.

Fifth, the applicant alleges infringement of the prohibition of retroactive effect. According to the applicant, the Commission is applying the 2006 Guidelines (<sup>1</sup>) to an alleged infringement that took place before the enactment of those guidelines.

Sixth, the applicant pleads infringement of the principles of equal treatment and of proportionality and a manifestly incorrect assessment of the facts by virtue of the fact that the Commission increased the basic amount of the applicant's fine by an additional amount of 16% of the applicant's value of sales.

Seventh, the applicant alleges infringement of Article 81 EC and the Guidelines on the setting of fines because, when calculating the applicant's fine, the Commission refused to take into account various mitigating circumstances for the applicant.

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(<sup>1</sup>) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (Text with EEA relevance) (OJ 2006 C 210, p. 2).