

**Judgment of the Court of First Instance of 30 April 2009**  
— **CD-Contact Data v Commission**

(Case T-18/03) <sup>(1)</sup>

*(Competition — Agreements, decisions and concerted practices — Market for Nintendo video games consoles and games cartridges — Decision finding an infringement of Article 81 EC — Limitation of parallel exports — Proof of the existence of an agreement to limit parallel trade — Fines — Differential treatment — Attenuating circumstances)*

(2009/C 141/76)

Language of the case: English

**Parties**

*Applicant:* CD-Contact Data GmbH (Burglengenfeld, Germany) (represented by: J. de Pree and R. Wesseling, lawyers)

*Defendant:* Commission of the European Communities (represented by: P. Oliver, X. Lewis and O. Beynet, Agents)

**Re:**

APPLICATION for the annulment of Commission Decision 2003/675/EC of 30 October 2002 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (COMP/35.587 PO Video Games, COMP/35.706 PO Nintendo Distribution and COMP/36.321 Omega — Nintendo) (OJ 2003 L 255, p. 33).

**Operative part of the judgment**

*The Court:*

1. Sets the amount of the fine imposed on CD-Contact Data GmbH at EUR 500 000;
2. Dismisses the action as to the remainder;
3. Orders each party to bear its own costs.

<sup>(1)</sup> OJ C 70, 22.3.2003.

**Judgment of the Court of First Instance of 30 April 2009**  
— **Spain v Commission**

(Case T-281/06) <sup>(1)</sup>

*(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Compensatory aid for banana producers — Irregularities in quality controls — Type of financial correction applied — Proportionality)*

(2009/C 141/77)

Language of the case: Spanish

**Parties**

*Applicant:* Kingdom of Spain (represented by: M. Muñoz Pérez, lawyer)

*Defendant:* Commission of the European Communities (represented by: F. Jimeno Fernández, Agent)

**Re:**

Partial annulment of Commission Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2006 L 218, p. 12) in so far as it provides for a financial correction applicable to expenses declared by the Kingdom of Spain pursuant to compensatory aid for banana producers for the financial years 2002 and 2003.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders the Kingdom of Spain to pay the costs.

<sup>(1)</sup> OJ C 294, 2.12.2006.

**Judgment of the Court of First Instance of 29 April 2009**  
— **BORCO-Marken-Import Matthiesen v OHIM (a)**

(Case T-23/07) <sup>(1)</sup>

*(Community trade mark — Application for the Community figurative mark α — Absolute ground for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)*

(2009/C 141/78)

Language of the case: German

**Parties**

*Applicant:* BORCO-Marken-Import Matthiesen GmbH & Co. KG (Hamburg, Germany) (represented by: M. Wolter, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: M. Kicia, acting as Agent)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 30 November 2006 (Case R 808/2006-4), concerning the registration as a Community trade mark of the figurative sign α

**Operative part of the judgment**

*The Court:*

1. Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 November 2006 (Case R 808/2006-4);
2. Declares that there is no need to adjudicate on the second head of claim of BORCO-Marken-Import Matthiesen GmbH & Co. KG;