Action brought on 28 February 2006 — Audi Aktiengesellschaft v OHIM

(Case T-70/06)

(2006/C 96/48)

Language in which the application was lodged: German

Parties

Applicant: Audi Aktiengesellschaft (Ingolstadt, Germany) (represented by O. Gillert, F. Schiwek, lawyers)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 December 2005 (Case R 237/2005-2);

— order the defendant to pay the costs of this action.

Pleas in law and main arguments

Community trade mark concerned: Word Mark 'Vorsprung durch Technik' for goods and services in Classes 9, 12, 14, 16, 18, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 45 — Application no. 3 016 292

Decision of the Examiner: Partial rejection of the application

Decision of the Board of Appeal: Partial rejection of the appeal

Pleas in law: Infringement of Article 7(1)(b) of EC Regulation 40/94, as the mark applied for is sufficiently distinct and the contested decision does not contain any findings regarding the relevant public.

Action brought on 23 February 2006 — Groupe Gascogne v Commission

(Case T-72/06)

(2006/C 96/49)

Language of the case: French

Parties

Applicant: Groupe Gascogne (Saint-Paul-lès-Dax, France) (represented by: C. Lazarus, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— primarily, set aside Articles 1(k), 2(i) and 4(12) of the decision in so far as they are addressed to Groupe Gascogne and imposed a fine on it, and amend Article 2(i) of the decision in so far as it imposes on Sachsa, contrary to Article 15(2) of Regulation No 17/62 and Article 23(2) of Regulation (EC) No 1/2003, a fine in excess of 10 % of its turnover;

— in the alternative, set aside Article 2(i) of the decision;

— in the further alternative, amend Article 2(i) of the decision and reduce the amount of the fine imposed jointly and severally on Sachsa and Groupe Gascogne;

— order the Commission to pay all of the costs of the proceedings.

Pleas in law and main arguments

By the present action, the applicant seeks the partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/F/38.354 — Industrial bags) by which the Commission decided that the undertakings to which that decision was addressed, which included the applicant, breached Article 81 EC by engaging in agreements or concerted practices in the industrial bags sector in Belgium, the Netherlands, Luxembourg, Germany, France and Spain. In the part of its decision which relates to the applicant, the Commission adjudged it to be jointly and severally liable with Sachsa Verpackung GmbH for the breach by reason of its status as parent company of Sachsa Verpackung. In the alternative, the applicant seeks annulment solely of Article 2(i), which imposes a fine on it, and, in the further alternative, the amendment of that article so as to bring about a reduction in the fine imposed.

In support of its claims, the applicant puts forward three pleas in law.

By the first plea, which is put forward as the principal plea, the applicant submits that the Commission breached the provisions of Article 81(1) EC by incorrectly attributing to it joint and several liability for the practices engaged in by Sachsa and by holding it jointly and severally liable for payment of the fine imposed on Sachsa.

By its second plea, put forward by way of alternative submission, the applicant submits that the Commission erred in law by misconstruing the notion of 'undertaking' within the meaning of Article 81 EC and, as a result, imposing on it a fine calculated on the basis of the consolidated turnover of Groupe Gascogne, whereas, according to the applicant, it ought to have based itself on the aggregate corporate turnover of Groupe Gascogne and Sachsa, having failed to set out reasons as to why the other subsidiaries of Groupe Gascogne ought to be included within 'the undertaking' liable in respect of the practices of Sachsa adjudged anti-competitive in the contested decision.

By its third plea, put forward as a further alternative, the applicant contends that the Commission infringed the principle of proportionality by imposing an allegedly excessive fine on Sachsa and Groupe Gascogne jointly and severally, in particular by failing to ensure that there was a reasonable relation between the penalty imposed and the actual turnover achieved by Groupe Gascogne within the plastic bags sector.

Action brought on 27 February 2006 — Bayer CropScience a.o. v Commission

(Case T-75/06)

(2006/C 96/50)

Language of the case: English

Parties

Applicants: Bayer CropScience AG (Monheim am Rhein, Germany), Makhteshim-Agan Holding BV (Amsterdam, Netherlands), Teko AE (Athens, Greece) and Aragonesas Agro SA (Madrid, Spain) [represented by: C. Mereu and K. Van Maldegem, lawyers]

Defendant: Commission of the European Communities

Form of order sought

— Order the annulment of Commission Decision 2005/864/EC [1], of 2 December 2005, concerning the non-inclusion of endosulfan in Annex I to Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this substance; and

— order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

Council Directive 91/414 [2] concerning the placing of plant protection products on the market (known as the 'plant protection products directive' or 'PPPD') provides that Member States shall not authorise a product unless it is inscribed in Annex I of the Directive. The applicants, who are producers of endosulfan, request the annulment of the contested Decision, which refused to include endosulfan in that Annex.

In support of their application they first invoke a number of alleged procedural irregularities, namely: that the assessment of the contested Decision is based on criteria other than those specified in Directive 91/414, is incomplete and makes only selective use of the data submitted by the applicants; that new guidelines and criteria established by the Commission were applied retroactively after the applicant's notification and submission of data; and that the Commission refused to advise and consult with the applicants in relation to changing evaluation criteria and policy.

The applicants further allege that from a substantive law viewpoint the contested Decision violates Article 95(3) EC and Article 5(1) of Directive 91/414. They consider that the Commission failed to comply with its duty, under these provisions, to assess active substances and include them in Annex I in light of current scientific and technical knowledge and subject only to the requirements listed in article 5.

They further invoke the violation of a number of general principles of Community law, namely: the principle of proportionality, the principle of legitimate expectations and legal certainty, the duty to perform a diligent and impartial assessment, the right of due process (right of defence and right to a fair hearing), the principle of excellence and independence of scientific advice, the principle of equal treatment, the principle that more general provisions must give way to a *lex specialis* and finally the principle of estoppel.

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[1] OJ L 317, 3/12/2005 p. 25
[2] OJ L 230 , 19/08/1991 p.1