— misuse of powers and manifest error of assessment on the part of the Commission;

It is noted in that respect that, for the purpose of attaining the objective pursued by Regulation No 2777/75, the Commission ought to have adopted exceptional measures to support the Italian market in poultrymeat, by far the most affected avicultural sector in Italy. By contrast, despite the repeated request put forward by the applicant, the Commission refused to do so, merely granting support measures in favour of the egg-laying sector, the least affected in Italy by restrictive measures and, essentially, the only one affected in the Netherlands. In so doing, the Commission clearly intended to allocate the majority of the available resources to Netherlands producers, reducing to a minimum the indemnity granted to Italian producers;

— misinterpretation and infringement of Article 14 of Regulation No 2777/75 and manifest error of assessment.

In the applicant's view, contrary to the view of the defendant, Article 14 of the regulation at issue does not apply only when the imbalances on the market are caused by the fact that it is impossible for producers which are in an area under surveillance and protection to have access to the market outside that area. In fact, the Commission could adopt exceptional support measures to restabilise the market affected by restrictions on free circulation which result from the application of measures intended to prevent the spread of animal disease, irrespective of whether those restrictions relate to products entering or those exiting a particular area;

— lastly, also the breach of the principles of sound administration, impartiality, fairness and transparency.

([1]) OJ L 282 of 1.11.1975, p. 77.

Action brought on 30 April 2007 — Colgate-Palmolive v OHIM — CMS Hasche Sigle (VISIBLE WHITE)

(Case T-136/07)

(2007/C 140/64)

Language in which the application was lodged: English

Parties

Applicant: Colgate-Palmolive Co. (New York, United States) (represented by: M. Zintler, H. Harmeling and K.-U. Plath, lawyers)

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

Other party to the proceedings before the Board of Appeal: CMS Hasche Sigle (Cologne, Germany)

Form of order sought

— The decision of the Fourth Board of Appeal dated 15 February 2007 shall be annulled;

— the Court shall confirm the decision of the Cancellation Division and declare that the Community trade mark No 802 793 'VISIBLE WHITE' remains registered;

— the applicant receives an award of costs in respect of the request for a declaration of invalidity, a reversal of the award of the costs made in the Board's decision, and an award of costs in respect of this application.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'VISIBLE WHITE' for goods in class 3 — Community trade mark No 802 793

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: CMS Hasche Sigle

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision and declaration of invalidity of the Community trade mark

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 40/94 as the Board of Appeal wrongly considered both the element 'VISIBLE' and the element 'WHITE' as descriptive in relation to 'toothpaste' as well as 'mouthwash' and considered the combination as a whole descriptive and devoid of distinctive character.

Action brought on 4 May 2007 — General Technic-Otis v Commission

(Case T-141/07)

(2007/C 140/65)

Language of the case: French

Parties

Applicant: General Technic-Otis Sàrl (Howald, Grand Duchy of Luxembourg) (represented by: M. Nobusch, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul on the basis of Article 230 EC the decision adopted by the Commission on 21 February 2007 relating to a proceeding under Article 81 EC and Article 53 EEA in Case COMP/E-1/38.823 — Elevators and Escalators, in so far as it concerns GTO;

— in the alternative, annul or reduce, on the basis of Article 229 EC, the fine imposed on it by that decision;

— order the Commission to pay all the costs.

Pleas in law and main arguments

By this action, the applicant is seeking the partial annulment of Commission decision C(2007)512 final of 21 February 2007 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/E-1/38.823 — PO/Elevators and Escalators), concerning a cartel on the market for the installation and maintenance of lifts and escalators in Belgium, Germany, Luxembourg and the Netherlands, and relating to the manipulation of calls for tenders, market-sharing, price-fixing, the award of projects and sales contracts, the installation, maintenance and modernisation of machinery and the exchange of information, in so far as it concerns the applicant. In the alternative, the applicant seeks annulment or reduction of the fine imposed on it by the contested decision.

In support of its claims, the applicant raises seven pleas.

In the first plea, the applicant submits that the Commission erred in fact and in law in application of the rules on the calculation of fines in so far as it held that the incriminating practices constituted a 'very serious' infringement. The applicant alleges that the starting amount of the fine should consequently be reduced owing to the limited geographical scope of the market in question and the limited impact of the offending practices on the market in question.

In its second plea, the applicant claims that the Commission erred in law and in fact in so far as it did not take into account the applicant's actual economic capacity to cause damage. It also maintains that the Commission should have taken into account, when fixing the amount of the fine, the applicant's status as a small or medium-sized undertaking, managed entirely independently and which, consequently, is incapable of causing significant damage on the market.

In the third plea, the applicant submits that the Commission erred in law and in fact in so far as it did not limit the amount of the fine to 10 % of its turnover and that it was wrong to take into account the turnover of the parent companies for the purpose of calculating the maximum fine to impose on the applicant.

The fourth plea alleges infringement by the Commission of the principle of equal treatment in so far as it did not apply the principles on liability consistently to all the members of the cartel in question. The applicant maintains that the Commission attributed the offending practices to its parent companies while it did not do so in respect of another company against which a finding of infringement was made in the same decision, although that company was in a comparable situation to the applicant's as regards the control exercised by the parent companies.

By its fifth plea, the applicant submits that the Commission erred in fact in so far as it did not grant it a reduction of 50 % of the fine under the Leniency Notice ([1]). The applicant maintains that its cooperation with the Commission was close, consistent and particularly wide in its scope and that it warrants the maximum reduction in the fine provided for by the Leniency Notice, that is, 50 %.

The sixth plea put forward by the applicant alleges infringement of the principle of legitimate expectations in so far as the Commission did not grant it a supplementary reduction of 10 % of the fine in return for not contesting the facts. The applicant claims that the notification of the statement of objections and the Commission's practice in taking decisions gave rise to the justified expectation on its part that it would obtain on that basis a reduction of 10 %, and not merely 1 % as granted in the contested decision.

The seventh plea alleges infringement of the principle of proportionality of penalties, in so far as the fine imposed on the applicant is not justified in the light of the infringement in question, and above all having regard to what is alleged to be its limited impact on the market and the fact it was committed by a company of limited size.

([1]) Commission notice on immunity from fines and reduction of fines in cartel cases, OJ 2002 C 45, p. 3.

Action brought on 4 May 2007 — General Technic v Commission

(Case T-142/07)

(2007/C 140/66)

Language of the case: French

Parties

Applicant: General Technic Sàrl (Luxembourg, Grand Duchy of Luxembourg) (represented by: M. Nosbusch, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul on the basis of Article 230 EC the decision adopted by the Commission on 21 February 2007 relating to a proceeding under Article 81 EC and Article 53 EEA in Case COMP/E-1/38.823 — Elevators and Escalators, in so far as it concerns GT;