

Action brought on 7 December 2007 — Behring & Söhne v Commission**(Case T-445/07)**

(2008/C 37/46)

*Language of the case: German***Parties**

Applicant: Behring & Söhne GmbH & Co. KG (Wuppertal, Germany) (represented by: P. Niggemann and K. Gaßner, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- the annulment of Commission Decision C(2007) 4257 final of 19 September 2007 (COMP/E-1/39.168 — Haberdashery: fasteners);
- in the alternative, the reduction of the fine imposed on the applicant in the contested decision to a symbolic penalty or to an amount that is in any event appropriate;
- that the defendant be ordered to pay the costs.

Pleas in law and main arguments

The applicant challenges Commission Decision C(2007) 4257 final of 19 September 2007 in Case COMP/E-1/39.168 — Haberdashery: fasteners. In the contested decision, a fine was imposed on the applicant and other undertakings for infringement of Article 81 EC. In the Commission's view, the applicant participated in the coordination of price increases, together with the exchange of confidential information as to prices and the implementation of price increases on the markets for 'other fasteners' and application machines.

The applicant relies on four pleas in law in support of its claim.

It submits, first, that the contested decision infringes its right to a fair hearing, since it had no opportunity to comment on a series of meetings held in relation to the so-called 'Basle group' and the 'Wuppertal group', on which the Commission based its allegations relating to the coordination of price increases and the exchange of confidential information as to prices and the implementation of price increases.

Secondly, it claims that the alleged infringements of the law relating to cartels have ceased, since the applicant ended its participation in the 'Basle group' and the 'Wuppertal group' as early as the beginning of 1997.

The applicant also maintains that there was no infringement of Article 81 EC, since the Commission has failed to adduce the requisite proof of the applicant's participation in any arrangements.

Lastly, the applicant claims that the calculation of the fine is factually incorrect. In that regard, it alleges in particular that the findings of the defendant, both as to the length of the purported infringement by the applicant, and as to the seriousness of the infringement, are incorrect and that the amount of the fine is disproportionate.

Action brought on 7 December 2007 — Royal Appliance International v OHIM — BSH Bosch und Siemens Hausgeräte (Centrixx)**(Case T-446/07)**

(2008/C 37/47)

*Language in which the application was lodged: German***Parties**

Applicant: Royal Appliance International GmbH (Hilden, Germany) (represented by: K.-J. Michaeli and M. Schork, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: BSH Bosch und Siemens Hausgeräte GmbH (Munich, Germany)

Form of order sought

- To annul the decision of the Fourth Board of Appeal of OHIM of 3 October 2007 in Case R 572/2006-4;
- To order the defendant to pay the applicant's costs and those of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark concerned: the word mark 'Centrixx' for goods in Class 7 (application No 3 016 227).

Proprietor of the mark or sign cited in the opposition proceedings: BSH Bosch und Siemens Hausgeräte GmbH.

Mark or sign cited in opposition: the German word mark 'sensixx' for goods in Class 7 (No 30 244 090).

Decision of the Opposition Division: rejection of the opposition.

Decision of the Board of Appeal: annulment of the decision of the Opposition Division and refusal of the application for registration of the mark.

Pleas in law: infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾, since the Board of Appeal incorrectly applied the principles of Community case-law concerning the likelihood of confusion.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Furthermore, the applicant submits that the Commission failed to prove to the requisite standard that the applicant's subsidiary participated in the cartel after 1997.

In the alternative, the applicant submits that the Commission:

- committed manifest errors when calculating the fine,
- did not take all relevant circumstances into account when assessing the duration and the gravity of the infringements; and
- omitted to assess the attenuating circumstances, such as the minor role played by the applicant's subsidiary.

Action brought on 5 December 2007 — Scovill Fasteners v Commission

(Case T-447/07)

(2008/C 37/48)

Language of the case: English

Parties

Applicant: Scovill Fasteners, Inc. (Clarkesville, United States) (represented by: O. Dugardyn, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the Commission's decision of 19 September 2007 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/E-1/39.168 — PO/Hard Haberdashery: Fasteners);
- in the alternative, annul or reduce the fine imposed on the applicant;
- order the Commission to bear its own costs and those incurred by the applicant.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2007) 4257 final of 19 September 2007 in Case COMP/E-1/39.168 — PO/Hard Haberdashery: Fasteners, by which the Commission found that the applicant's subsidiary, together with other undertakings, had infringed Article 81 EC by agreeing on coordinated price increases and exchanging confidential information on prices and the implementation of price increases.

In support of its application, the applicant contends that the Commission erroneously considered that the applicant forms a single economic entity with its subsidiary and that the applicant should not be held jointly and severally liable for the payment of the fine imposed on its subsidiary for the subsidiary's alleged infringements.

Action brought on 3 December 2007 — Rotter v OHIM (EU-BRUZZEL)

(Case T-449/07)

(2008/C 37/49)

Language in which the application was lodged: German

Parties

Applicant: Thomas Rotter (Munich, Germany) (represented by M. Müller, lawyer)

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

Form of order sought

- To annul the decision of the Fourth Board of Appeal of OHIM of 27 September 2007 in Case R 1415/2006-4;
- To order OHIM to pay the costs of the proceedings including those incurred during the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: the three-dimensional mark 'EU-BRUZZEL' for goods and services in Classes 29, 30 and 43 (application No 4 346 185).

Decision of the Examiner: rejection in part of the application.

Decision of the Board of Appeal: dismissal of the appeal.

Pleas in law: infringement of Article 7(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾, since the mark applied for is distinctive in relation to the contested charcuterie goods.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).