

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).