

The applicant relies on nine pleas in law in support of its action. In the first six pleas the applicant attempts to state that there is insufficient evidence of an infringement of the law. It is submitted in particular that there was failure to have regard to the full burden of proof which lies with the defendant, infringement of the inquisitorial principle, an erroneous assumption that the seal was affixed properly, a false assumption that there was something amiss with the condition of the seal on the following day, a false assumption as to the suitability of the security foil, and that there was failure on the defendant's part to consider alternative scenarios.

With the seventh plea it is submitted that the presumption of innocence was disregarded and thus essential rules as to procedure and form were infringed.

Eighth, the applicant submits that the defendant erred in making the accusation of fault for the purpose of Article 23 of Regulation No 1/2003.

Lastly, it is submitted that there were infringements of the law when the fine was calculated. According to the applicant there was infringement of the principle prohibiting arbitrary measures and of the obligation to state reasons laid down in Article 253 EC. There was failure to have regard to mitigating circumstances and an erroneous acceptance of aggravating circumstances.

(¹) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 17 April 2008 — Atlas Transport v OHIM — Atlas Air (ATLAS)

(Case T-145/08)

(2008/C 158/31)

Language in which the application was lodged: German

Parties

Applicant: Atlas Transport GmbH (Düsseldorf, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, Rechtsanwälte)

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

Other party to the proceedings before the Board of Appeal of OHIM: Atlas Air, Inc. (New York, United States of America)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 January 2008 (Case R 1023/2007-1);
- order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'ATLAS' for goods and services in classes 9, 36 and 39 (Community trade mark No 2 970 788).

Proprietor of the Community trade mark: The applicant.

Applicant for the declaration of invalidity: Atlas Air, Inc.

Trade mark right of applicant for the declaration: In particular the figurative mark 'ATLASAIR' registered in the Benelux States for goods in class 39 (No 555 184).

Decision of the Cancellation Division: Community trade mark declared partially invalid for services in class 39.

Decision of the Board of Appeal: Applicant's appeal dismissed as inadmissible.

Pleas in law: Infringement of the third sentence of Article 59 of Regulation (EC) No 40/94 (¹), as the grounds of the appeal were linked to very specific assumptions and implicit grounds were not regarded as being sufficient. Further, analogous infringement of Article 61 of Regulation No 40/94 in conjunction with Rule 20(7) of Regulation (EC) No 2868/95 (²), as the proceedings before OHIM should necessarily have been suspended.

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

(²) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 17 April 2008 — Deutsche Rockwool Mineralwoll v OHIM — Redrock Construction (REDROCK)

(Case T-146/08)

(2008/C 158/32)

Language in which the application was lodged: German

Parties

Applicant: Deutsche Rockwool Mineralwoll GmbH & Co. OHG (Gladbeck, Germany) (represented by: S. Beckmann, Rechtsanwältin)