

The applicant further submits that, in wrongly relying on the permissible exceptions for denying access to the documents requested, the Commission has violated Article 255 EC and Articles 1(a), 2(1) and (3), 4(1) to (6) of the Access Regulation and that, consequently, the contested decision is vitiated by an infringement of the Treaty and of any rule of law relating to its application, as envisaged in Article 230(2) EC.

<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

<sup>(2)</sup> OJ 1989 L 298, p. 23.

<sup>(3)</sup> OJ 1997 L 202, p. 60.

No 1049/2001 <sup>(1)</sup>, since the exceptions laid down in those provisions were misinterpreted or misapplied. Further, the applicant claims that the Commission infringed the last clause of Article 4(2) of Regulation No 1049/2001, since it wrongly denied that the applicant has an overriding public interest in access to the file in Case COMP/F/38.899. Finally, the applicant submits that there was an infringement of Article 4(6) of Regulation No 1049/2001, since the applicant ought to have been allowed to consult at least part of the documentation included in the file in Case COMP/F/38.899.

<sup>(1)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

### Action brought on 25 August 2008 — EnBW Energie Baden-Württemberg v Commission

(Case T-344/08)

(2008/C 272/83)

*Language of the case: German*

#### Parties

*Applicant:* EnBW Energie Baden-Württemberg AG (Karlsruhe, Germany) (represented by: A. Bach and A. Hahn, lawyers)

*Defendant:* Commission of the European Communities

#### Form of order sought

— Annul Commission Decision D(2008) 4931 of 16 June 2008 concerning a request for access to the administrative files in Case COMP/F/38.899 (Gas insulated switchgear);

— in the alternative, annul Commission Decision D(2008) 4931 of 16 June 2008 concerning a request for access to the administrative files in Case COMP/F/38.899 (Gas insulated switchgear) in so far as the Commission also refused the applicant partial access to the documents on the file;

— order the Commission to pay the costs.

#### Pleas in law and main arguments

The applicant objects to the Commission's decision of 16 June 2008 rejecting the applicant's second request for access to documents on the Commission's file in Case COMP/F/38.899 — Gas insulated switchgear.

The applicant advances three pleas in support of its application.

First of all, the applicant alleges an infringement of the first and third indents of Article 4(2) of Regulation (EC)

### Action brought on 22 August 2008 — Helena Rubinstein v OHIM — Allergan (BOTOLIST)

(Case T-345/08)

(2008/C 272/84)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* Helena Rubinstein, SNC (Paris, France) (represented by: A. von Mühlendahl and J. Pagenberg, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Allergan, Inc. (Irvine, United States)

#### 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 28 May 2008 in case R 863/2007-1;

— Dismiss the appeal filed by the other party to the proceedings before the Board of Appeal against the decision of the Cancellation Division of the defendant taken on 28 March 2007 in case 1118 C;

— Order the defendant to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should it become an intervening party in this case.