

Action brought on 24 September 2008 — El Fatmi v Council

(Case T-409/08)

(2008/C 301/90)

*Language of the case: Dutch***Parties***Applicant:* El Fatmi (Vught, Netherlands) (represented by: G. Pulles)*Defendant:* Council of the European Union**Form of order sought**

- Declare Regulation (EC) No 2580/2001 to be inapplicable and/or declare Council Decision 2008/583/EC of 15 July 2008 to be void, in so far as they apply to the applicant;
- order the Council to pay the costs.

Pleas in law and main arguments

The applicant asks the Court to declare Regulation (EC) No 2580/2001 ⁽¹⁾ to be inapplicable to him and Council Decision 2008/583/EC ⁽²⁾ to be void, in so far as it applies to the applicant.

First, the applicant submits that the Council acted contrary to the requirements of Article 5 EC. The Council had no power, since there is no connection to third countries or to the common market.

Second, Articles 60, 301 and 308 EC do not confer any power to adopt the contested regulation.

Third, the Council acted contrary to Article 1(3) of Common Position 2001/931 of 27 December 2001 ⁽³⁾ and infringed essential procedural requirements and principles of Community law, including the duty to state reasons. According to the applicant, the national decisions on which the Council also relies are not decisions adopted by a competent authority within the meaning of Article 1(4) of the Common Position or are decisions that have been annulled on appeal to the national courts.

Fourth, the Council has infringed the applicant's fundamental rights and in particular the right to respect for private and family life, the right to effective judicial protection and the right to property.

⁽¹⁾ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

⁽²⁾ Council Decision of 15 July 2008 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC (OJ 2008 L 188, p. 21).

⁽³⁾ Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (OJ 2001 L 344, p. 93).

Action brought on 30 September 2008 — Artisjus Magyar Szerzői Jogvédő Iroda Egyesület v Commission

(Case T-411/08)

(2008/C 301/91)

*Language of the case: English***Parties***Applicant:* Artisjus Magyar Szerzői Jogvédő Iroda Egyesület (Budapest, Hungary) (represented by: Z. Hegymegi-Barakonyi and P. Vörös, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul Articles 3 and 4(2) of the decision in so far as they relate to the applicant as well as Article 4(3) of the decision in so far as it refers to Article 3;
- Order the Commission to pay the costs.

Pleas in law and main arguments

By means of its application, the applicant seeks partial annulment of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) determining that the EEA CISAC ⁽¹⁾ members engaged in a concerted practice in violation of Article 81 EC and Article 53 EEA, by coordinating the territorial delineations of the reciprocal representation mandates granted to one another in a way which limits a licence to the domestic territory of each collecting society.

The applicant seeks the annulment of Articles 3 and 4(2) and (3) of the contested decision which relate to three specific forms of exploitation (internet, satellite transmission and cable retransmission) in so far as they hold the applicant liable for an Article 81 EC infringement by coordinating with other CISAC members the territorial delineation clauses of reciprocal representation agreements in a way which limited a licence to the domestic territory of each collective rights management societies ('CMRS').

The applicant challenges the contested decision on the basis of four grounds, namely, lack of competence, infringement of an essential procedural requirement, the infringement of the EC Treaty and the misuse of powers by the Commission.

In support of its application, the applicant submits the following pleas in law:

First, according to the applicant, the Commission violated the applicant's rights of defence by adopting the contested decision and fundamentally departing from its position in the Statement of Objections.

Second, the applicant claims that the decision infringes Article 253 EC, as it lacks proper reasoning and fails to identify the starting point of the alleged concerted practice.

Third, the applicant contends that the decision violates Article 81 EC and Article 2 of Regulation (EC) No 1/2003⁽¹⁾ as the Commission did not produce sufficient evidence to establish the existence of a concerted practice to the requisite legal standard and consequently failed to meet the burden of proof.

Fourth, it is submitted that the decision violates Article 86(2) EC, as the applicant is an undertaking entrusted with the operation of services of general economic interest and the application of EC competition law as set out in the contested decision obstructs the performance of the particular tasks assigned to it.

Moreover, according to the applicant, the Commission misused its powers under Article 81 EC by evading a procedure specifically prescribed by the EC Treaty for dealing with the circumstances of the case. Further, the applicant puts forward that the decision violates Article 151(4) EC as it does not respect cultural diversity. Finally, it is submitted that the decision violates the principle of legal certainty in so far as it requires a course of conduct which the Commission failed to define.

(1) International Confederation of Societies of Authors and Composers ('CISAC').

(2) 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 EC (OJ 2003 L 1, p. 1).

Action brought on 25 September 2008 — Trubion Pharmaceuticals v OHIM — Merck (TRUBION)

(Case T-412/08)

(2008/C 301/92)

Language in which the application was lodged: English

Parties

Applicant: Trubion Pharmaceuticals Inc. (Seattle, United States) (represented by: C. Hertz-Eichenrode, lawyer)

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

Other party to the proceedings before the Board of Appeal: Merck KGaA (Darmstadt, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 July 2008 in case R 1605/2007-2; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'TRUBION' for goods and services in classes 5 and 42

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: Community trade mark registration No 72 884 of the word mark 'BION' registered for various goods; Community trade mark registration No 3 282 936 of the figurative mark 'TriBion Harmonis' registered for various goods

Decision of the Opposition Division: Upheld the opposition for the goods in class 5 and rejected it for the remaining services in class 42

Decision of the Board of Appeal: Dismissal of the appeal