

- infringement of Article 23 of Regulation No 1/2003 and the principle of protection of legitimate expectations in fixing the amount of the fine, in that the Commission misapplied the guidelines for calculating fines by (i) not using an audited figure for turnover and (ii) omitting to estimate the total value of sales of goods or services in connection with the infringement in the geographical sector. Moreover, the Commission erred in its classification of the facts. Finally, the applicant puts forward, in support of its claim for a reduction of the fine, the small part of the aggregate market share of the parties to the agreement and the lack of implementation;
- infringement of the Euro-Mediterranean Agreement with Tunisia ⁽²⁾, on the ground that the Commission applied the Community competition rules exclusively, although the competition rules of the Euro-Mediterranean Agreement were applicable, albeit in parallel to the Community competition rules. According to the applicant, the Commission should have consulted the EU/Tunisia Association Committee, as required by Article 36 of the Agreement. The applicant further submits that the unilateral approach taken by the Commission is contrary to the principle of international comity and to its duty of care.

⁽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).

⁽²⁾ Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (OJ 1998 L 97, p. 2).

Action brought on 21 November 2008 — Volkswagen v OHIM — Deutsche BP (SunGasoline)

(Case T-502/08)

(2009/C 44/84)

Language in which the application was lodged: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by: H.-P. Schrammek, C. Drzymalla and S Risthaus, 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: Deutsche BP AG (Gelsenkirchen, Germany)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of OHIM of 19 September 2008 in appeal case R-513/2007-4, and

- Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Volkswagen.

Community trade mark concerned: word mark 'SunGasoline' in respect of goods and services in Classes 4, 7, 12, 35, 37 and 39 (Application No 3 418 647).

Proprietor of the mark or sign cited in the opposition proceedings: Deutsche BP AG.

Mark or sign cited in opposition: the German word mark 'GASOLIN' (Trade mark No 763 901) in respect of goods in Class 4.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Appeal upheld for certain goods in Class 4.

Pleas in law: Infringement of Article 15(2)(b) in conjunction with Article 43(2) of Regulation No 40/94 ⁽¹⁾ in that legally accepted use of the mark in opposition was not proved to the requisite level, and infringement of Article 8(1)(b) of Regulation No 40/1994 in that there is no likelihood of confusion between the marks at issue.

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

Action brought on 20 November 2008 — Rundpack v OHIM (Representation of a tumbler)

(Case T-503/08)

(2009/C 44/85)

Language in which the application was lodged: German

Parties

Applicant: Rundpack (represented by R. Chmilewsky-Lehner, lawyer)

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

Form of order sought

- Annul the contested decision (R 1400/2006-1) of OHIM of 3 September 2008 and refer the trade mark application No 003 317 591 back to OHIM to allow for the registration process to continue, and order OHIM to bear all the costs associated with the case, in particular including those incurred before the Board of Appeal.

— In the alternative, annul the contested decision of OHIM of 3 September 2008 and refer the trade mark application No 003 317 591 in respect of a reduced list of goods back to OHIM to allow for the registration process to continue, and order OHIM to bear all the costs associated with the case, in particular including those incurred before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: the three-dimensional mark 'BECHER RUND' in respect of goods in Classes 16, 17 and 20 (Application No 3 317 591).

Decision of the Examiner: Rejection 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⁾ in that the trade mark applied for has the necessary minimum distinctive character.

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

Action brought on 21 November 2008 — Mologen v OHIM (dSLIM)

(Case T-504/08)

(2009/C 44/86)

Language of the case: German

Parties

Applicant: Mologen AG (Berlin, Germany) (represented by C. Klages, lawyer)

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

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 17 September 2008 in Case R 1077/2007-4;

— order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'dSLIM' for goods and services in classes 1, 5, 10, 42 and 44 (Application No 5 355 136).

Decision of the Examiner: Rejection of the application.

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

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ⁽¹⁾, in that the sign neither lacks distinctive character nor involves a descriptive indication.

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

Action brought on 25 November 2008 — Nadine Trautwein Rolf Trautwein v OHIM (Hunter)

(Case T-505/08)

(2009/C 44/87)

Language of the case: German

Parties

Applicant: Nadine Trautwein Rolf Trautwein GbR, Research and Development (Leopoldshöhe, Germany) (represented by C. Czychowski, lawyer)

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

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 17 September 2008 in Case R 1733/2007-1, as well as the decision of the examiner of 17 October 2007 and admit Community trade mark application No 4829347 for publication; and

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Hunter' for goods in classes 18 and 25 (Application No 4 829 347)

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ⁽¹⁾, in that the trade mark neither can be denied the necessary distinctive character nor involves a descriptive indication.

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