

Action brought on 29 January 2010 — El Corte Inglés v OHIM — Pucci International (PUCCI)

(Case T-39/10)

(2010/C 100/74)

Language in which the application was lodged: English

Parties

Applicant: El Corte Inglés, S.A. (Madrid, Spain) (represented by: M. López Camba, J. Rivas Zurdo and E. Seijo Veiguela, lawyers)

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

Other party to the proceedings before the Board of Appeal: Emilio Pucci International B.V. (Baarn, The Netherlands)

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 29 October 2009 in case R 173/2009-1;
- Order the defendant to pay the costs incurred by the applicant;
- Order the other party to the proceedings before the Board of Appeal to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark “PUCCI”, for goods in classes 3, 9, 14, 18, 25 and 28

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: Spanish trade mark registrations of the figurative mark ‘Emidio Tucci’, for goods in classes 3, 9, 14, 25 and 28; Spanish trade mark registration of the word mark ‘E. Tucci’, for goods in class 25; Community trade mark application for the figurative mark ‘Emidio Tucci’, covering *inter alia* goods in classes 3, 9, 14, 25 and 28.

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly found that there was no likelihood of confusion between the trade marks concerned; infringement of Article 8(5) of Council Regulation No 207/2009 as the Board of Appeal failed to conclude that the conditions for the application of this provision are fulfilled, as the earlier trade marks enjoy reputation in Spain in respect of articles related to fashion and the use of a similar sign by a third party would be detrimental to and take unfair advantage of such a reputation.

Action brought on 29 January 2010 — Elf Aquitaine v Commission

(Case T-40/10)

(2010/C 100/75)

Language of the case: French

Parties

Applicant: Elf Aquitaine SA (Courbevoie, France) (represented by: É. Morgan de Rivery, S. Thibault-Liger and A. Noël-Baron, lawyers)

Defendant: European Commission

Form of order sought

- annul, on the basis of Article 263 of the Treaty on the Functioning of the European Union (TFEU), the whole of [Commission] Decision No C(2009) 8682 final of 11 November 2009 in Case COMP/38589 — Heat Stabilisers in so far as it concerns Elf Aquitaine;
- in the alternative, annul, on the basis of Article 263 TFEU:
 - Article 2(11), (13), (28) and (30) of Commission’ Decision No C(2009) 8682 final of 11 November 2009 inasmuch as it imposes i) two fines of EUR 3 864 000 and EUR 7 154 000 jointly and severally on Arkema France, CECA and Elf Aquitaine and ii) two fines of EUR 2 704 800 and EUR 5 007 800 on Elf Aquitaine alone; and

- Article 1(1)(h) and (2)(h) of Commission Decision No C(2009) 8682 final of 11 November 2009 in so far as those two provisions state that Elf Aquitaine infringed Article 81 EC and Article 53 EEA respectively (i) in the tin stabilisers sector between 16 March 1994 and 31 March 1996 and between 9 September 1997 and 21 March 2000 and (ii) in the ESBO/esters sector between 11 September 1991 and 26 September 2000;
- in the further alternative:
 - annul, on the basis of Article 263 TFEU, Article 1(1)(h) of Commission Decision No C(2009) 8682 final of 11 November 2009 inasmuch as it states that Elf Aquitaine infringed Article 81 EC and Article 53 EEA in the tin stabilisers sector between 16 March 1994 and 31 March 1996;
 - and reduce, on the basis of Article 261 TFEU:
 - the fines of EUR 3 864 000 and EUR 7 154 000 imposed jointly and severally on Arkema France, CECA and Elf Aquitaine by Article 2(11) and (28) respectively of Commission Decision No C(2009) 8682 final of 11 November 2009; and
 - the fines of EUR 2 704 800 and EUR 5 007 800 imposed on Elf Aquitaine by Article 2(13) and (30) respectively of Commission Decision C(2009) 8682 final of 11 November 2009;
- in any event, order the European Commission to pay all of the costs.

Pleas in law and main arguments

In the present case, the applicant is seeking the annulment of Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/39.859 — Heat Stabilisers) concerning cartels in the markets for tin stabilisers and ESBO/esters heat stabilisers throughout the EEA involving price-fixing, the allocation of markets and the exchange of sensitive commercial information or, in the alternative, the cancellation or the reduction of the fine imposed on the applicant.

The action is based, primarily, on two pleas for the annulment of the whole of the decision. The first plea alleges infringement

of the applicant's rights of defence. In the second plea, the applicant alleges that the decision is vitiated by a number of errors of law relating to liability for infringements committed by its subsidiary Arkema and its lower-tier subsidiary CECA.

The action is also based on two pleas in the alternative, and two pleas in the further alternative. In the third plea (in the alternative), the applicant alleges a number of errors of law which must lead, at the very least, to the cancellation of the four fines which were imposed on it under Article 2 of the decision. In the fourth plea (in the alternative), the applicant considers that were the Court to uphold the third plea, it should also annul Article 1 of the decision in so far as it concerns the applicant. In the fifth plea (in the further alternative), if the Court were to reject the first part of the third plea concerning the infringement of the limitation rules, the applicant considers that, at the very least, Article 1(1)(h) of the decision should be annulled inasmuch as it states that the applicant infringed Article 81 EC and Article 53 EEA in the tin stabilisers sector between 16 March 1994 and 31 March 1996. In the sixth plea (in the further alternative), the applicant submits that if the Court were to reject the two principal pleas and the third plea submitted in the alternative, the infringement of its rights of defence should, at the very least, lead to a reduction of the four fines which were imposed on it.

Action brought on 2 February 2010 — SIMS — Ecole de ski internationale v OHIM — SNMSF (esf école du ski français)

(Case T-41/10)

(2010/C 100/76)

Language in which the application was lodged: French

Parties

Applicant: Syndicat international des moniteurs de ski — Ecole de ski internationale (SIMS — Ecole de ski internationale) (Albertville, France) (represented by: L. Raison-Rebufat, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Syndicat national des moniteurs du ski français (SNMSF) (Meylan, France)