

Pleas in law and main arguments

Applicant for a Community trade mark: Juan Palacios Serrano.

Community trade mark concerned: Word mark 'AIR FORCE' (application No 5 016 704) in respect of goods in Class 14.

Proprietor of the mark or sign cited in the opposition proceedings: Tempus Vade, S.L.

Mark or sign cited in opposition: Community word mark 'TIME FORCE' (application No 395 657) in respect of goods in Classes 14, 18 and 25; and four other Community figurative marks which contain the word element 'TIME FORCE': application No 398 776 in respect of goods in Class 14, 18 and 25; application No 3 112 133 in respect of goods in Classes 3, 8, 9, 14, 18, 25, 34, 35 and 37, and applications Nos 1 998 375 and 2 553 667 in respect of goods in Class 14.

Decision of the Opposition Division: Opposition upheld in its entirety.

Decision of the Board of Appeal: Annulment of the contested decision and rejection of the opposition.

Pleas in law: Incorrect application of Article 8(1)(b) and (5) of Regulation No 207/2009 on the Community trade mark.

Action brought on 19 February 2010 — Riva Fire SpA v European Commission

(Case T-83/10)

(2010/C 100/96)

Language of the case: Italian

Parties

Applicant: Riva Fire SpA (Milan, Italy) (represented by: M. Merola, avvocato, M. Pappalardo, avvocato, T. Ubaldi, avvocato)

Defendant: European Commission

Form of order sought

As a principal claim

— Annulment in its entirety of the Decision if it emerges from the investigation in the case that all the matters of fact and law underlying the Decision were not put before the College of Commissioners for the purposes of its adoption;

— Annulment, in any event, of Article 1 of the Decision in so far as it declares that the applicant participated in a cartel and/or concerted practices regarding concrete reinforcing bar in bars or coils with the object or effect of fixing prices and limiting and/or controlling output or sales in the common market;

— Annulment, in consequence, of Article 2 of the Commission Decision in so far as it imposes a fine of EUR 26.9 million on the applicant;

In the alternative:

— Reduction of the amount of the fine of EUR 26.9 million imposed on the applicant by Article 2 of the Decision and re-setting of the fine.

And, in any event,

— An order that the Commission pay the costs of these proceedings.

Pleas in law and main arguments

The applicant seeks annulment of the Decision of the Commission of the European Communities C(2009) 7492 fin. of 30 September 2009 relating to a proceeding under Article 65 of the ECSC Treaty (COMP/37.956 — reinforcing bars, re-adoption), as supplemented and amended by the Decision of the European Commission C(2009) 9912 fin. of 8 December 2009. In support of its application the company relies on eight pleas.

By its first plea the applicant argues that the Commission has no authority to declare an infringement of Article 65(1) CS in relation to facts falling within the scope of that provision after the ECSC Treaty ceased to be in force and to impose a penalty on the basis of Articles 7(1) and 23(2) of Regulation No 1/2003 (!) although those provisions refer solely to infringements of Articles 81 and 82 EC (now, Articles 101 and 102 TFEU).

By its second plea the applicant asserts that the contested decision breaches Article 10(3) and (5) of Regulation (EEC) No 17/62 ⁽²⁾ and Article 14(1) and (3) of Regulation (EC) No 1/2003 because it is not apparent from the Decision whether the Commission undertook the required consultation of the Advisory Committee as required by those articles and whether that committee obtained all the necessary information for a full assessment of the substance of the infringement imputed to the undertakings to which the Decision was addressed.

By its third plea the applicant maintains that the Commission breached Article 36(1) CS in that, by refusing to disclose the criteria it used to determine the fines to be imposed, it limited the opportunity for the addressees of the objections to submit observations.

By its fourth plea the applicant argues that the contested decision breaches Articles 10 and 11 of Commission Regulation No 773/2004, ⁽³⁾ as fully amended by the Commission, and the rights of defence of the undertakings concerned because, following the annulment of the Commission's original decision by the General Court, the Commission went on to re-adopt the contested decision without sending to the undertakings any further statement of objections.

By its fifth plea the applicant complains of shortcomings and inconsistencies in the grounds for the decision, in so far as, on the one hand, the relevant geographical market is defined as the Italian Republic and, on the other hand, it is maintained that the alleged agreement is liable to have an effect on Community trade for the purposes of the application of the principle of *lex mitior*.

By its sixth plea the applicant argues that the Commission's analysis, as set out in the Decision, is vitiated by certain errors of assessment of the facts, resulting in misapplication of Article 65 CS in relation to various aspects of the contested infringement, including, in particular, the parts of the agreement regarding the fixing of the basic price of the bars, the fixing of the price supplement for larger dimensions and the limitation or control of output and/or sales.

By its seventh plea the applicant argues that the contested decision is erroneous and states insufficient grounds (inter alia as a result of inadequate investigation) as regards the imputation of the infringement as a whole to the applicant.

By its eighth plea the applicant alleges a breach of Article 23(2) of Regulation (EC) No 1/2003, of the 1996 Leniency Notice of

the Commission and of the Commission's 1998 Guidelines on the method of setting fines.

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- (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) EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition, I, 1959-1962, p. 87).
- (3) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ 2004 L 123, p. 18).

Action brought on 18 February 2010 — Alfa Acciai SpA v European Commission

(Case T-85/10)

(2010/C 100/97)

Language of the case: Italian

Parties

Applicant(s): Alfa Acciai SpA (Brescia, Italy) (represented by: D. Fosselard, avvocato, S. Amoruso, avvocato, L. Vitolo, avvocato)

Defendant(s): European Commission

Form of order sought

— Annulment of Commission Decision C(2009) 7492 fin. of 30 September 2009 (COMP/37.956 — reinforcing bars, re-adoption) ('the Decision'), as supplemented and amended by the Decision of the European Commission C(2009) 9912 fin. of 8 December 2009, in so far as it declares an infringement of Article 65 CS by Alfa Acciai S.p.A and imposes a fine of EUR 7 175 million;

In the alternative:

— Annulment of Article 2 of the Decision which imposes a fine on the applicant;

In the further alternative:

— Reduction of the fine;

— An order that the defendant pay the costs.