

— declare the non-contractual liability of the European Union and order the Court of Justice to compensate the applicant for all the loss incurred on account of the contested decisions and appoint an expert to evaluate that loss;

— order the Court of Justice to pay all the costs and expenses.

Pleas in law and main arguments

The pleas in law and arguments put forward by the applicant are identical to those put forward in Case T-170/10 *CTG Luxembourg PSF v Court of Justice* ⁽¹⁾ concerning the same tendering procedure.

⁽¹⁾ OJ 2010 C 161, p. 48.

Action brought on 23 August 2010 — Hartmann v OHMI — Mölnlycke Health Care (MESILETTE)

(Case T-342/10)

(2010/C 288/92)

Language in which the application was lodged: English

Parties

Applicant: Paul Hartmann AG (Heidenheim, Germany) (represented by: N. Aicher, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mölnlycke Health Care AB (Göteborg, Sweden)

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 20 May 2010 in case R 1222/2009-2, and;

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

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 'MESILETTE', for goods in class 5 — Community trade mark application No 6494025

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

Mark or sign cited: German trade mark registration No 1033551 of the word mark 'MEDINETTE', for goods in class 25; International trade mark registration No 486204 of the word mark 'MEDINETTE', for goods in class 25

Decision of the Opposition Division: Rejected the opposition

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 made an incorrect assessment of the likelihood of confusion, in particular of the similarity of the signs.

Action brought on 18 August 2010 — Etimine and Etiproducts v ECHA

(Case T-343/10)

(2010/C 288/93)

Language of the case: English

Parties

Applicants: Etimine SA (Bettembourg, Luxembourg) and Ab Etiproducts Oy (Espoo, Finland), (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Chemicals Agency (ECHA)

In addition, by adopting the contested act, ECHA infringed the EU law principle of proportionality.

Form of order sought

- Declare the application admissible and well-founded;

- Annul the contested act as it relates to Boric Acid and Disodium Tetraborates;

- Declare the illegality of Commission Regulation (EC) No 790/2009⁽¹⁾ of 10 August 2009 insofar as it relates to Boric Acid and Disodium Tetraborates; and

- Order ECHA to pay all the costs and the expenses of these proceedings.

Finally, the contested act is based on Commission Regulation (EC) No 790/2009 which is in itself unlawful.

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- ⁽¹⁾ Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2009 L 235, p. 1).
 - ⁽²⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).
 - ⁽³⁾ Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 1967 196, p. 1)

Pleas in law and main arguments

The applicants seek, pursuant to Article 263 TFEU, the annulment of the decision of European Chemicals Agency to include Boric Acid and Disodium Tetraborates in the candidate list of substances established under Article 59 of Regulation (EC) No 1907/2006⁽²⁾. In addition, the applicants seek, pursuant to Article 277 TFEU, a declaration as to the illegality of Commission Regulation (EC) No 790/2009 of 10 August 2009 insofar as it relates to Boric Acid and Disodium Tetraborates.

In support of their application, the applicants put forward the following pleas in law:

Firstly, the contested act was adopted in breach of essential procedural requirements and as an error of law because it failed to fulfil the requirements of Article 59 and Annex XV of Regulation (EC) No 1907/2006.

Secondly, the contested act is based on a manifest error of assessment and is in breach of Regulation (EC) No 1907/2006 because ECHA failed to produce evidence and demonstrate that the Borate Substances ‘meet the criteria’ for classification as toxic to reproduction category 2 under Directive 67/548⁽³⁾.

Action brought on 20 August 2010 — UPS Europe and United Parcel Service Deutschland v Commission

(Case T-344/10)

(2010/C 288/94)

Language of the case: English

Parties

Applicants: UPS Europe NV/SA (Brussels, Belgium) and United Parcel Service Deutschland Inc. & Co. OHG (Neuss, Germany), (represented by: T.R. Ottervanger and E.V.A. Henny, lawyers)

Defendant: European Commission

Form of order sought

- Declare, in accordance with Article 265 TFEU, that the Commission has failed to act by not having defined its position in case C 36/07 (ex NN 25/07) — Germany/ Deutsche Post; and

- Order the defendant to pay the costs incurred by the applicants in the proceedings.