

*Decision of the Opposition Division:* The opposition was rejected.

*Decision of the Board of Appeal:* The appeal was dismissed.

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009,<sup>(1)</sup> in that there is a likelihood of confusion between the marks at issue.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

## Action brought on 7 September 2010 — Mamoli Robinetteria v Commission

(Case T-376/10)

(2010/C 288/113)

*Language of the case:* Italian

### Parties

*Applicant:* Mamoli Robinetteria SpA (Milan, Italy) (represented by: F. Capelli, lawyer, M. Valcada, lawyer)

*Defendant:* European Commission

### Form of order sought

— Annul Article 1 of European Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA Agreement, notified (Case COMP/39092 — Bathroom Fittings and Fixtures), in so far as it finds that Mamoli Robinetteria SpA had infringed Article 10 TFEU and, consequently, annul Article 2 of that decision in so far as it imposes on Mamoli Robinetteria SpA a fine amounting to 10 % of the total turnover for 2009, subsequently reduced to EUR 1 041 531 on account of Mamoli's specific situation;

— Annul Article 2 of European Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement, notified (Case COMP/39092 — Bathroom Fittings and

Fixtures), recalculating the fine and reducing it to an amount equal to 0.3 % of Mamoli Robinetteria's turnover for 2003 or, in any event, to such lesser amount, compared with the penalty imposed, as the Court may deem appropriate.

### Pleas in law and main arguments

The decision contested in these proceedings is the same as that contested in Case T-364/10 *Duravit and Others v Commission* and Case T-368/10 *Rubinetteria Cital v Commission*.

In support of its action, the applicant relies on the following pleas in law.

Infringement of the rights of the defence, of the principle of *audi alteram partem* and of the principle of equal treatment, in so far as the other parties to the proceedings were able to put forward arguments in their defence in relation to circumstances not disclosed to Mamoli. It is also argued that the statement of objections was also based on documents treated as confidential and not accessible to the parties for consultation.

Breach of the principle of legality and infringement of Articles 101 to 105 TFEU, taken together, and Article 23 of Council Regulation No 1/2003.<sup>(1)</sup> In that connection, the applicant submits that, in the absence of an act of the European legislature, the Commission does not have any power to grant partial or total immunity to undertakings or, on the basis of such a statement of objections, to initiate competition proceedings resulting in the imposition of heavy penalties.

Infringement of Article 101 TFEU and Article 2 of Regulation EC No 1/2003.

In that connection, the applicant submits that the Commission made substantial errors during the investigation, disregarding the specific nature of the Italian market (for example, structure, characteristics, roll of wholesalers) and conflating the situation of the Italian market with that of the German market. That error undermined the Commission's conclusions as to the existence of a price-fixing cartel on the Italian market. In addition, as a result of the errors alleged, the Commission did not discharge the burden of proof incumbent on it.

As regards the amount of the fine, the applicant submits that the Commission did not correctly evaluate the applicant's actual conduct or the impact of that conduct in the context of the contested infringement, since it failed to take due account of the critical economic situation in which the applicant found itself.

The applicant submits that, although the Commission understood that Mamoli was in fact in a critical economic situation undermining the company's ability to pay, it adopted a decision unsuitable for attaining the objective sought.

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(<sup>1</sup>) 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).

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**Action brought on 8 September 2010 — Wabco Europe and Others v Commission**

(Case T-380/10)

(2010/C 288/114)

*Language of the case: English*

**Parties**

*Applicants:* Wabco Europe BVBA (Brussels, Belgium), Wabco Austria GesmbH (Vienna, Austria), Trane Inc. (Piscataway, United States), Ideal Standard Italia s.r.l. (Milan, Italy) and Ideal Standard GmbH (Bonn, Germany), (represented by: S. Völcker, F. Louis, A. Israel and N. Niejahr, lawyers, C. O'Daly and E. Batchelor, Solicitors, and F. Carlin, Barrister)

*Defendant:* European Commission

**Form of order sought**

— Partially annul Article 2 and, to the extent necessary, Article 1 (1) N. 3 and 4 of the Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures;

— Reduce the amount of the fine imposed on the applicants; and

— Order the Commission to bear the costs.

**Pleas in law and main arguments**

By means of their application, the applicants seek, pursuant to Article 263 TFUE, the partial annulment of Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures, relating to an agreement between undertakings covering the Belgian, German, French, Italian, Dutch and Austrian markets of bathroom fittings and fixtures, concerning the sale prices and the exchange of sensitive commercial information, as well as, in the alternative, the reduction of the amount of the fine imposed on them.

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

Firstly, the applicants allege that the Commission disregarded the applicable legal standards in its attempts to establish the participation of Ideal Standard Italia s.r.l. and of Ideal Standard GmbH in a ceramics-related infringement in Italy.

Secondly, the applicants allege that the Commission failed to reduce the fine imposed on them for the French and Belgian infringements despite granting partial immunity from fines for such infringements under the last paragraph of point 23 of the Commission's 2002 notice on immunity from fines and reduction of fines in cartel cases (<sup>1</sup>).

Thirdly, the applicants allege that the Commission erred in finding that Grohe Beteiligungs GmbH and Grohe AG and its subsidiaries, rather than Ideal Standard Italia s.r.l. and Ideal Standard GmbH, were the first to provide "significant added value" under the Commission's 2002 notice on immunity from fines and reduction of fines in cartel cases.

Finally, the applicants allege that the Commission's retroactive application of the 2006 Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (<sup>2</sup>) was unlawful, insofar as it penalised Ideal Standard Italia s.r.l. and Ideal Standard GmbH for the kind of information that it provided as a leniency applicant in the good faith expectation that the Commission would not drastically alter the applicable fining framework to their detriment.

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(<sup>1</sup>) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

(<sup>2</sup>) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

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**Action brought on 8 September 2010 — Spain v Commission**

(Case T-384/10)

(2010/C 288/115)

*Language of the case: Spanish*

**Parties**

*Applicant:* Kingdom of Spain (represented by: J. Rodríguez Cárcamo)