

Third, the applicants claim that the Commission infringed Article 23(2) of Regulation No 1/2003 on account of miscalculation of the fine in the light of the Leniency Notice. ⁽²⁾ They complain that, although they cooperated, they were not granted a reduction in the fine imposed on them.

Fourth, the applicants claim that the application of the Guidelines on setting fines ⁽³⁾ to situations which ended long before publication of those guidelines infringes the principle of non-retroactivity.

The applicants also assert that the Commission's fine-setting practice is not covered by the enabling provision of Article 23(2) of Regulation No 1/2003. The applicants allege in this connection that the contested decision infringes the principle of equal treatment and the principle of proportionality. Furthermore, Article 23(2) of Regulation No 1/2003, as applied by the Commission in its fine-setting practice pursuant to the Guidelines on the method of setting fines, infringes the principle of the lawfulness of penalties, laid down in Article 7 ECHR and Article 49 of the Charter of Fundamental Rights of the European Union.

Lastly, the applicants complain that Article 23(2) of Regulation No 1/2003 and the Guidelines on setting fines have been misapplied on account of numerous errors of application and assessment to the applicants' detriment. They claim in particular that the adduction and assessment of the evidence by the Commission is incorrect in relation to the individual facts of the case as regards the applicants.

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

⁽³⁾ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

Action brought on 6 September 2010 — Preparados Alimenticios v OHIM — Rila Feinkost-Importe (Jambo Afrika)

(Case T-377/10)

(2010/C 301/64)

Language in which the application was lodged: English

Parties

Applicant: Preparados Alimenticios, SA (Barcelona, Spain) (represented by: D. Pellisé Urquiza, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rila Feinkost-Importe GmbH & Co. KG (Stemwede-Levern, Germany)

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 9 June 2010 in case R 1144/2009-1;

— Declare the present action admissible and justified; and

— Declare that the contested Community trade mark application shall not be granted.

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 'Jambo Afrika', for goods in classes 29, 30 and 33

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

Mark or sign cited: Spanish trade mark registrations No 2573221, No 2573219 and No 2573216 of the figurative mark 'JUMBO', for goods in classes 29 and 30; Community trade mark registration No 2217404 of the figurative mark 'JUMBO CUBE', for goods in class 29; Community trade mark registration No 2412823 of the figurative mark 'JUMBO MARINADE', for goods in classes 29 and 30; Community trade mark registration No 2413391 of the figurative mark 'JUMBO NOKKOS', for goods in classes 29 and 30; Community trade mark registrations No 2413581, No 2423275, No 2970754, No 3246139, No 3754462 and No 4088761 of the figurative mark 'JUMBO' for goods in classes 29 and 30

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Rejected the opposition in its entirety

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly excluded likelihood of confusion.