

- breach of Article 41 of the Charter, since the excessive length of the procedure was not taken into account when the fine was calculated;
- breach of the principle of the proportionality of penalties and errors of assessment when the fine was calculated, since the basic amount was set at 15 % and the absolute amount of the fine exceeded the limit of 10 % of the applicant's turnover.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

Action brought on 7 September 2010 — Continental Bulldog Club Deutschland v OHIM

(Case T-383/10)

(2010/C 301/69)

Language in which the application was lodged: German

Parties

Applicant: Continental Bulldog Club Deutschland eV (Berlin, Germany) (represented by S. Vollmer, lawyer)

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

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 23 June 2010 in Case R 300/2010-1;
- In the alternative, annul the contested decision, in so far as it concerns goods and services in Class 44;
- Order the defendant to pay the costs of the proceedings, including those of the proceedings before the Board of Appeal.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'CONTINENTAL' for goods in Classes 31 and 44.

Decision of the Examiner: Registration was refused.

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

Pleas in law: Breach of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009, ⁽¹⁾ since the Community trade mark in question is distinctive and is not descriptive.

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

Action brought on 13 September 2010 — ArcelorMittal Wire France and Others v Commission

(Case T-385/10)

(2010/C 301/70)

Language of the case: French

Parties

Applicants: ArcelorMittal Wire France (Bourg-en-Bresse, France), ArcelorMittal Fontaine (Fontaine-L'Évêque, Belgium), ArcelorMittal Verderio Srl (Verderio Inferiore, Italy) (represented by: H. Calvet, O. Billard and M. Pittie, lawyers)

Defendant: European Commission

Form of order sought

- Principally, annul the Commission decision in Case COMP/38.344 — Pre-stressing steel in so far as (i) in Article 1 thereof, it finds that AMWF, AM Fontaine and AM Verderio took part in a single and continuous infringement and/or a concerted practice in the pre-stressing steel sector contrary to Article 101 TFEU and Article 53 of the EEA Agreement from 1 January 1984 to 19 September 2002, 20 December 1984 to 19 September 2002 and from 3 April 1995 to 19 September 2002 respectively; (ii) it, consequently, imposes on them, in Article 2 thereof, fines amounting to EUR 276,48 million as regards AMWF, of which EUR 268,8 million is imposed jointly and severally with AM Fontaine and EUR 72 million is imposed jointly and severally with AM Verderio; (iii) it orders them, in Article 3 thereof, to immediately bring the infringement to an end, if they have not already done so and to refrain from repeating any act or conduct of the kind described in (i) and any act or conduct having the same or similar object or effect and (iv) in Article 4 thereof, it addresses the decision to them.

- In the alternative, in the exercise of its unlimited jurisdiction, vary the decision by reducing very substantially the amounts of the fines imposed on each of the applicants, as those amounts appear in Article 2, and

- In any event, order the Commission to pay all the costs.

Pleas in law and main arguments

The applicant seeks, principally, annulment of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the European Economic Area Agreement ('EEA') (Case COMP/38.344 — Pre-stressing steel) concerning a cartel in the European pre-stressing steel market relating to the fixing of prices, the sharing of the market and the exchange of sensitive commercial information.

In support of their action, the applicants put forward several pleas in law alleging:

- an infringement of the applicants' fundamental right to an impartial tribunal and an infringement of Article 47 of the Charter of fundamental rights of the European Union inasmuch as the Commission exercises the role of both prosecutor and judge;
- an infringement of Article 23(2) of Regulation No 1/2003⁽¹⁾ and of the principles of the personal nature of penalties, proportionality and equal treatment inasmuch as the Commission imposed fines on the applicants in an amount manifestly exceeding the legal ceiling of 10 % of their total turnover in the preceding business year;
- an insufficient amount of evidence showing the existence of an infringement of Article 101 TFEU and Article 53 EEA for the period between 1 January 1984 and November 1982 or, at very least, the lack of a statement of reasons;
- the lack of a statement of reasons and an infringement of the Guidelines on the method of setting fines⁽²⁾ as well as an infringement of the principles of legitimate expectations and sound administration inasmuch as there are gaps in the decision making it impossible to understand the method applied by the Commission to calculate the fines;
- the lack of a statement of reasons and manifest errors of law and fact inasmuch as the fines imposed on AMWF and AM Fontaine were increased by 60 % on the basis that they had previously committed offences;
- an insufficient statement of reasons and an infringement of Article 23(2) of Regulation No 1/2003 as well as an infringement of the principles of equality and proportionality inasmuch as only the amount of the applicants' fines was increased by 20 % for dissuasive effect, although other parties to the cartel were in the same situation.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003, L 1, p. 1).

⁽²⁾ Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003

Action brought on 8 September 2010 — Dornbracht v Commission

(Case T-386/10)

(2010/C 301/71)

Language of the case: German

Parties

Applicant: Aloys F. Dornbracht GmbH & Co KG (Iserlohn, Germany) (represented by: H. Janssen, T. Kapp and M. Franz, lawyers)

Defendant: European Commission

Form of order sought

- Annul the contested decision, in so far as it concerns the applicant;
- In the alternative, reduce the fine imposed on the applicant in the contested decision;
- Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. The decision imposed fines on the applicant and other undertakings on account of the infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant took part in a long-lasting agreement or concerted practices in the bathroom fittings and fixtures sector in Germany and Austria.

In support of its claim, the applicant relies on eight pleas in law.

First, the applicant claims that there has been an infringement of Article 23(2) of Regulation (EC) No 1/2003,⁽¹⁾ because the defendant did not take into account a number of mitigating circumstances in the applicant's favour.

Second, the applicant claims that there has been an infringement of Article 23(3) of Regulation No 1/2003, because the defendant, by interpreting the second sentence of Article 23(2) of that regulation as a cap, prevented itself from assessing the gravity of the infringement of which the applicant was accused.

Third, the applicant claims that the principle of equal treatment has not been observed because the defendant, by fixing general amounts, failed to take into account the applicant's individual contribution to the act.