

*Defendant:* European Commission

### Form of order sought

- Annul or reduce the fine imposed by the Commission on Emme Holding by decision of 30 June 2010 (Case COMP/38.344 — Pre-stressing steel).
- Order the Commission to pay the costs.

### Pleas in law and main arguments

The decision contested in the present case is the same as that in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.

In particular, the applicant submits that:

- the attribution to the applicant of a single and continuous infringement instituted by all the European cartels (Club Europa) and all the national/regional cartels (Club Italiano, Club España and the Accordo Meridionale) is unjustified. The applicant has never in fact participated (actively or passively) at European level in the alleged infringement. Similarly, Trame was unaware of any regional or national cartels operating in countries other than Italy.
- the decision takes account of both stranded wire (7 strands) and braided wire (2-3 strands). However, the applicant submits that braided wire has never been the subject of a cartel in connection with Club Italia. The turnover generated by that product should therefore not be taken into account in calculating the fine.

The applicant also seeks a reduction of the fine, on the ground that its participation in the alleged infringement was marginal, and on account of its inability to pay.

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### Action brought on 16 September 2010 — Redaelli Tecna v Commission

(Case T-423/10)

(2010/C 317/65)

*Language of the case: Italian*

### Parties

*Applicant:* Redaelli Tecna SpA (Milan, Italy) (represented by: R. Zaccà, M. Todino and E. Cruellas Sada, lawyers)

*Defendant:* European Commission

### Form of order sought

- Annul the contested decision in so far as it finds that Redaelli participated in the cartel referred to in the decision throughout the period 1984-1992.

- Annul the contested decision in so far as it rejected Redaelli's request for leniency and, consequently, grant an appropriate reduction in the amount of the fine, on account of the cooperation given by Redaelli in the Commission's investigation by means of that request.

- Further reduce, on ground of equity, the fine imposed on Redaelli by way of compensation for the unreasonable length of the procedure.

### Pleas in law and main arguments

The decision contested in the present case is the same as that in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.

In particular, the applicant submits that:

- The Commission committed a serious infringement of the principle of equal treatment by applying stricter standards only to Redaelli and refusing to grant it leniency, which, conversely, was granted to other undertakings whose requests for leniency contributed little in terms of 'added value', and considerably less than the added value contributed by the applicant. In so doing, the Commission also infringed the principle of protection of legitimate expectations because, essentially, it disregarded the applicant's legitimate expectation that its own request would be assessed in the light of the criteria developed in the Commission's practice at the time of the request, which were laid down in the 2002 Notice.
- The Commission claimed incorrectly that the parties were involved in the cartel during the period 1984-1992 but has failed to adduce sufficient evidence concerning the existence of the cartel throughout the period in question.
- The unreasonable length of the administrative procedure adversely affected the applicant's rights of defence, as a result of which it was required to obtain exculpatory evidence after it had ceased to be available, and also had a negative impact on the actual assessment of the applicant's request for leniency.

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### Action brought on 18 September 2010 — Dosenbach-Ochsner v OHIM — Sisma (Representation of a rectangle with elephants)

(Case T-424/10)

(2010/C 317/66)

*Language in which the application was lodged: German*

### Parties

*Applicant:* Dosenbach-Ochsner AG Schuhe und Sport (Dietikon, Switzerland) (represented by: O. Rauscher, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Sisma SpA (Mantova, Italy)

### Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 July 2010 in Case R 1638/2008-4;
- Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

### Pleas in law and main arguments

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The figurative mark representing a rectangle with elephants for goods in Classes 10, 16, 21, 24 and 25

*Proprietor of the Community trade mark:* SISMA S.p.A.

*Applicant for the declaration of invalidity:* the applicant

*Trade mark right of applicant for the declaration:* international and national figurative marks representing an elephant and the national word mark 'elefanten' for goods in Classes 24 and 25

*Decision of the Cancellation Division:* rejection of the application for a declaration of invalidity

*Decision of the Board of Appeal:* dismissal of the appeal

*Pleas in law:* Infringement of Article 53(1)(a) in conjunction with Article 8(1)(b) and (2)(a) of Regulation (EC) No 207/2009 <sup>(1)</sup> as the marks at issue are conceptually, visually and aurally similar and the applicant has expressly submitted that its trade marks have acquired a highly distinctive character as a result of intensive use or their reputation.

<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 21 September 2010 — Häfele v OHIM (Mixfront)

(Case T-425/10)

(2010/C 317/67)

*Language in which the application was lodged:* German

### Parties

*Applicant:* Häfele GmbH & Co. KG (Nagold, Germany) (represented by M. Eck and J. Dönch, lawyers)

*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 30 June 2010 in Case R 338/2010-1;
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

### Pleas in law and main arguments

*Community trade mark concerned:* Word mark 'Mixfront' for goods in Classes 6 and 20.

*Decision of the Examiner:* Application refused.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Infringement of Article 7(1)(b), (c) and (d) of Regulation (EC) No 207/2009, <sup>(1)</sup> as the Community trade mark concerned is distinctive, is not descriptive and is not a name that has become customary.

<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 16 September 2010 — Moreda-Riviere Trefilerías SA v Commission

(Case T-426/10)

(2010/C 317/68)

*Language of the case:* Spanish

### Parties

*Applicant:* Moreda-Riviere Trefilerías SA (Gijón, Spain) (represented by F. González Díaz and A. Tresandi Blanco, lawyers)

*Defendant:* European Commission

### Form of order sought

- Annulment pursuant to Article 263 of the Treaty on the functioning of the European Union of the decision of the European Commission of 30 June 2010 C(2010) 4387 final on a proceeding under Article 101 TFEU in Case COMP/38.344 — Prestressing steel;
- or, in the alternative, annulment or reduction pursuant to Article 261 of the Treaty on the functioning of the European Union of the amount of the fine imposed by that decision;