— in failing to find that the Appellants were requested by the Rapporteur Member State and EFSA to submit further data to clarify the dossier, in accordance with Article 8(5) of Regulation 451/2000 ([3]);

— in failing to find that the Commission did not follow the proper course of the regulatory procedure as prescribed in the Council Decision 1999/468 ([4]) and in holding that the Commission did not breach Article 5 of Council Decision 1999/468; and

— in failing to find that the Commission assessed trifluralin against criteria outside the scope of Directive 91/414, for which there is no basis in the relevant legal framework, and therefore acted *ultra vires*.

For these reasons the Appellants claim that the judgment of the General Court in Case T-475/07 should be set aside and the Commission Decision 2007/629/EC should be annulled.

([1]) OJ L 255, p. 42
([2]) OJ L 230, p. 1
([3]) OJ L 55, p. 25
([4]) OJ L 184 p. 23

Appeal brought on 24 November 2011 by Regione Puglia against the order of the General Court (First Chamber) delivered on 14 September 2011 in Case T-84/10 Regione Puglia v Commission

(Case C-586/11 P)

(2012/C 25/75)

Language of the case: Italian

Parties

Appellant: Regione Puglia (represented by: F. Brunelli and A. Aloia, avvocati)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the order made on 14 September 2011 by the General Court, notified to the appellant on 15 September 2011, declaring that the action in Case T-84/10 is inadmissible;

— Accordingly, analyse the substance of the case and, consequently, annul Decision C(2009) 10350 of the European Commission of 22 December 2009 concerning 'the lifting of the suspension of interim payments from the European Regional Development Fund relating to the programme to which this decision refers', confirming the validity and applicability only of the provision made in Article 4;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The appellant alleges, first, procedural irregularities in the proceedings before the court at first instance, which were seriously detrimental to the appellant, namely the omission of the oral procedure provided for in Article 114(3) of the Rules of Procedure of the General Court.

Second, the appellant claims that the General Court infringed Community law, first, by misinterpreting the fourth paragraph of Article 263 TFEU and Council Regulation (EC) No 1260/1999, ([1]) in conjunction with Article 4(2) and (3) TFEU and Article 5(3) TFEU, and, second, failing to state adequate grounds for its findings, in breach of Article 81 of its Rules of Procedure.

([1]) OJ 1999 L 161, p. 1.

Appeal brought on 24 November 2011 by Omnicare, Inc. against the judgment of the General Court (First Chamber) delivered on 9 September 2011 in Case T-289/09: Omnicare, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

(Case C-587/11 P)

(2012/C 25/76)

Language of the case: English

Parties

Appellant: Omnicare, Inc. (represented by: M. Edenborough QC)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

Form of order sought

The appellant seeks an Order that the judgment under appeal be annulled. Further, the Appellant seeks an Order for its costs of this appeal and before the General Court.

Pleas in law and main arguments

The Appellant relies upon a single plea in law, namely that the General Court wrongly applied Article 8(1)(b) of Council Regulation (EC) № 207/2009 ([1]) (the 'New Regulation'). This case involves an opposition brought by Astellas Pharma GmbH (formerly Yamanouchi Pharma GmbH) (the 'Opponent') based upon the Opponent's German trade mark registration № 394 01348 and an allegation of the existence of confusion pursuant to Article 8(1)(b) of the Council Regulation (EC) № 40/94 ([2]) ('the Old Regulation') (but which is identical to the pertinent parts of the New Regulation). As the earlier mark had been registered for more than five years before the Opposition was commenced, it was necessary for the Opponent to prove that the mark has been put to genuine use in order for it to be used as a basis for the Opposition.

It is submitted that the General Court wrongly held that the earlier trade mark upon which the Opponent relied had, as a matter of law, been put to genuine use. It is not disputed that the mark in question had actually been used in the course of trade by or with the consent of the Opponent in relation to the services for which it was registered. However, that use was in relation to the provision of services for which no charge was levied. Accordingly, as a matter of law, such use cannot be invoked to establish that the mark had been put to genuine use. This point has been the subject of some case law, which the Appellant submits (a) was mis-applied by the General Court, and (b) is inconsistent in any event. Accordingly, the matter of the legal consequences that ought to be drawn in such a factual scenario needs to be resolved by this Court.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, p. 1
(2) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark
OJ L 11, p. 1

Appeal brought on 24 November 2011 by Omnicare, Inc. against the judgment of the General Court (First Chamber) delivered on 9 September 2011 in Case T-290/09: Omnicare, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

(Case C-588/11 P)

(2012/C 25/77)

Language of the case: English

Parties

Appellant: Omnicare, Inc. (represented by: M. Edenborough QC)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

Form of order sought

The appellant seeks an Order that the judgment under appeal be annulled. Further, the Appellant seeks an Order for its costs of this appeal and before the General Court.

Pleas in law and main arguments

The Appellant relies upon a single plea in law, namely that the General Court wrongly applied Article 8(1)(b) of Council Regulation (EC) № 207/2009 (1) (the 'New Regulation'). This case involves an opposition brought by Astellas Pharma GmbH (formerly Yamanouchi Pharma GmbH) (the 'Opponent') based upon the Opponent's German trade mark registration № 394 01348 and an allegation of the existence of confusion pursuant to Article 8(1)(b) of the Council Regulation (EC) № 40/94 (2) ('the Old Regulation') (but which is identical to the pertinent parts of the New Regulation). As the earlier mark had been registered for more than five years before the Opposition was commenced, it was necessary for the Opponent to prove that the mark has been put to genuine use in order for it to be used as a basis for the Opposition.

It is submitted that the General Court wrongly held that the earlier trade mark upon which the Opponent relied had, as a matter of law, been put to genuine use. It is not disputed that the mark in question had actually been used in the course of trade by or with the consent of the Opponent in relation to the services for which it was registered. However, that use was in relation to the provision of services for which no charge was levied. Accordingly, as a matter of law, such use cannot be invoked to establish that the mark had been put to genuine use. This point has been the subject of some case law, which the Appellant submits (a) was mis-applied by the General Court, and (b) is inconsistent in any event. Accordingly, the matter of the legal consequences that ought to be drawn in such a factual scenario needs to be resolved by this Court.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, p. 1
(2) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark
OJ L 11, p. 1

Appeal brought on 25 November 2011 by Alliance One International, Inc. against the judgment of the General Court (Third Chamber) delivered on 9 September 2011 in Case T-25/06: Alliance One International, Inc. v European Commission

(Case C-593/11 P)

(2012/C 25/78)

Language of the case: English

Parties

Appellant: Alliance One International, Inc. (represented by: C. Osti, A. Prastaro, G. Mastrantonio, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside, in its entirety, the judgment of the General Court of 9 September 2011 in case T-25/06 Alliance One v. Commission; and, in case the state of the proceedings so permits,

— annul Article 1(1) of the Contested Decision, in so far it relates to SCC, Dimon and Alliance One; and accordingly

— reduce the fines imposed on Transcatab and Dimon Italia (Mindo) so that the fines do not exceed 10 % of their turnover in the last fiscal year; and

— reduce the fine imposed on Transcatab and Dimon Italia (Mindo) as the multiplying factor is not applicable anymore since it was based on the group size;