

Decision of the Board of Appeal: Annulled the decision of the Opposition Division to the extent it rejected the opposition for part of the services in class 35. Rejected the CTM application for these services and dismissed the appeal for the remaining services in class 35

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed the existence of a likelihood of confusion between the applied mark and the opposed mark.

Action brought on 18 July 2011 — Langguth Erben v OHIM (MEDINET)

(Case T-378/11)

(2011/C 269/121)

Language of the case: German

Parties

Applicant: Franz Wilhelm Langguth Erben GmbH & Co. KG (Traben-Trarbach, Germany) (represented by R. Kunze and G. Würtenberger, lawyers)

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

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of 10 May 2011 in Case R 1598/2010-4 relating to Community trade mark application No 8 786 485;
- Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark 'MEDINET' for goods in Class 33 — application No 8 786 485

Decision of the Examiner: the registration of the mark with seniority of earlier national and international marks was refused

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Articles 34, 75 and 77 of Regulation No 207/2009 as the Board of Appeal (i) refused to register the seniority in an unlawful manner; (ii) did not examine the applicant's submissions in respect of Board of Appeal decisions regarding claims of priority and seniority; and (iii) did not fix a date for oral proceedings.

Action brought on 21 July 2011 — Hüttenwerke Krupp Mannesmann and Others v Commission

(Case T-379/11)

(2011/C 269/122)

Language of the case: German

Parties

Applicants: Hüttenwerke Krupp Mannesmann GmbH (Duisburg, Germany), ROGESA Roheisengesellschaft Saar mbH (Dillingen, Germany), Salzgitter Flachstahl GmbH (Salzgitter, Germany), Thyssenkrupp Steel Europe AG (Duisburg, Germany) and voestalpine Stahl GmbH (Linz, Austria) (represented by: S. Alten-schmidt and C. Dittrich, lawyers)

Defendant: European Commission

Form of order sought

- annul the Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (C(2011) 2772) (OJ 2011 L 130, p. 1);
- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicants challenge the Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council. ⁽¹⁾ They submit that this decision should be set aside in its entirety.

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

1. First plea in law: the product benchmark for sintered ore breaches Article 10a of Directive 2003/87/EC ⁽²⁾

The applicants invoke the illegality of the conditions governing product benchmarks set out in Annex I to the contested decision.

- Incompatibility with Article 10a(2) of Directive 2003/87

The applicants submit that the determination of the product benchmark for sintered ore breaches Article 10a(2) of Directive 2003/87 on the ground that the Commission included a plant for the production of pellets when establishing the average performance of the 10 % most efficient installations in a sector or subsector in the European Union as the starting point for determining the product benchmark. Pellets, however, are a different product from sintered ore, and for that reason plants producing pellets ought not to have been taken into account for the purpose of determining the 10 % most efficient sinter installations.

- Incompatibility with Article 10a(1) of Directive 2003/87