Action brought on 19 August 2011 — Scandic Distilleries v OHMI — Bürgerbräu, August Röhm & Söhne (BÜRGER)

(Case T-460/11)

(2011/C 331/46)

Language in which the application was lodged: English

Parties

Applicant: Scandic Distilleries SA (Bihor, Romania) (represented by: Á. László, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bürgerbräu, August Röhm & Söhne KG (Bad Reichenhall, Germany)

Form of order sought

— Alter the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 May 2011 in case R 1962/2010-2 and render the registration of the trade mark application as a Community trade mark with regard to all goods and services concerned;

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'BÜRGER ORIGINAL PREMIUM PILS TRADITIONAL BREWED QUALITY REGISTERED TRADEMARK SIEBENBURGEN', for goods and services in classes 32 and 35 — Community trade mark application No 8359663

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Community trade mark registration No 1234061 of the word mark 'Bürgerbräu', for goods and services in classes 21, 32 and 42

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

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Action brought on 23 August 2011 — Ellinika Nafpigia and Hoern Beteiligungs Gesellschaft mit beschränkter Haftung v Commission

(Case T-466/11)

(2011/C 331/47)

Language of the case: Greek

Parties

Applicants: Ellinika Nafpigia AE (Skaramagka, Greece) and Hoern Beteiligungs GmbH (Kiel, Germany) (represented by: K. Khrisogonos and A. Mitsis, lawyers)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2010) 8274 final of 1 December 2010 relating to State aid CR 16/2004 (ex NN 29/2004, CP 71/2002 and CP 133/2005) — which constitutes a measure implementing Decision C(2008) 3118 final of 2 July 2008 (OJ 2009 L 225, p. 104) concerning recovery of State aid ('the recovery decision') — as supplemented, defined and elucidated by the documents and other material on the file;

— order the Commission to pay the applicants' costs;

— in the alternative, interpret, in a binding manner *erga omnes* and in particular as against the Commission, Decision C(2010) 8274 final of 1 December 2010, as supplemented by the documents and other material on the file, with the meaning defined more specifically in the application, in such a way that it is compatible with Article 17 of the recovery decision upon which the contested decision is founded, with Article 346 TFEU, pursuant to which the contested decision was adopted, with the principles of certitude and of legal certainty and with the rights to freedom of establishment, to freedom to provide services, to freedom to carry on a business and to property, which are infringed by the current interpretation and application of the contested decision by the Commission and the Greek authorities.

Pleas in law and main arguments

In support of the action, the applicants rely on four pleas in law.

By the first plea for annulment, the applicants submit that the Commission has infringed Article 17 of the recovery decision, since the contested decision affects the military activities of Ellinika Nafpigia AE (Hellenic Shipyards; 'HSY') in so far as it requires HSY to sell all of its assets which are today not absolutely necessary, but are nevertheless partly or relatively necessary or can become absolutely necessary in the future for HSY's military activities.

By the second plea for annulment, the applicants submit that the contested decision is being misinterpreted — applying Article 346 TFEU incorrectly — as meaning that HSY's military activities encompass only the current orders of the Greek Navy and not every non-commercial activity of HSY, such as future orders of the Navy or of Greek or other armed forces and any other activity for the construction, supply or repair of defence material.

By the third plea for annulment, the applicants assert that the contested decision, in breach of the principles of certitude and legal certainty, leaves substantial ambiguities as regards its personal, temporal and material scope, while at the same time it confers a very wide discretion on its implementing bodies, in such a way that it is interpreted as laying down obligations and prohibitions that are not envisaged in the recovery decision, are imposed on persons not liable, are imprecise and inapplicable, or go beyond what is reasonable as determined by the protection of fundamental rights and freedoms. Furthermore, the applicants consider that the contested decision, in breach of the principles of certitude and legal certainty, is partly incapable of implementation since it imposes measures which, *de facto* and/or *de jure*, cannot be implemented in their entirety or in part, while the six-month time-limit imposed for its implementation was also unfeasible and unrealistic from the beginning.

By the fourth plea for annulment, the applicants contend that the contested decision imposes obligations and prohibitions on HSY and its shareholders in a way that infringes their fundamental rights of freedom of establishment, of freedom to provide services, of freedom to carry on a business and to property, partly without a legal basis therefor and, in any event, going beyond what is necessary to achieve the objective of recovery.

Action brought on 5 September 2011 — Sepro Europe v Commission

(Case T-483/11)

(2011/C 331/48)

Language of the case: English

Parties

Applicant: Sepro Europe Ltd (Harrogate, United Kingdom) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission

Form of order sought

— Declare the application admissible and well-founded;

— Annul Commission Decision 2011/328/EU [1];

— Order the defendant to pay the costs of the proceedings; and

— Take such other or further measures as justice may require.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that the defendant committed manifest errors of appraisal, as it erred as a matter of law in justifying Commission Decision 2011/328/EU on the grounds of the alleged concerns regarding (i) worker exposure and (ii) environmental exposure.

2. Second plea in law, alleging that the defendant violated the due process and the right of defence, as well as the principle of sound administration, as it wrongly took into account the alleged concern regarding isomer ratio which was only identified as a critical concern for the first time during the resubmission and at a very late stage of the procedure. As a result, the applicant was not given an opportunity to address the issue. Moreover, the defendant failed to take into consideration the proposal from the applicant for amendment.

3. Third plea in law, alleging that Commission Decision 2011/328/EU is unlawful because it is disproportionate. Even if it were accepted that there are concerns which deserve further attention, the measure in question is disproportionate in the way it approaches the alleged worker exposure and environmental exposure concerns.

4. Fourth plea in law, alleging that Commission Decision 2011/328/EU is unlawful because it is inadequately reasoned, as the defendant failed to provide any evidence or reasoning to justify its disagreement with the amendment proposed by the applicant, thus affecting the calculation of estimated worker exposure levels, as well as with the use of high technology glasshouses.

[1] Commission Implementing Decision of 1 June 2011 concerning the non-inclusion of flurprimidol in Annex I to Council Directive 91/414/EEC (notified under document C(2011) 3733) (OJ 2011 L 153, p. 192)

Action brought on 12 September 2011 — Akzo Nobel and Akcros Chemicals v Commission

(Case T-485/11)

(2011/C 331/49)

Language of the case: English

Parties

Applicants: Akzo Nobel NV (Amsterdam, The Netherlands) and Akcros Chemicals Ltd (Warwickshire, United Kingdom) (represented by: C. Swaak and R. Wesseling, lawyers)

Defendant: European Commission