

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission departed from its rules of practice, erred in law and breached its duty to state reasons, the principle of proportionality and the principle of equality in setting the basic amount of the fine by calculating the 'value of sales' relevant to the infringement on the basis of total sales to EEA customers.
2. Second plea in law, alleging that the Commission departed from its rules of practice, erred in law and breached its duty to state reasons, the principle of proportionality and the principle of equality in setting the basic amount of the fine by failing to take into account the particularities of the case and the nature of the industry in question (including the impact of the *Air Cargo* cartel).
3. Third plea in law, alleging that the Commission erred in law by concluding that it had jurisdiction in respect of the advanced manifest system ('AMS') infringement prior to 1 May 2004.
4. Fourth plea in law, alleging that the Commission departed from its rules of practice by misapplying its discretion in relation to the settlement procedure.

Action brought on 15 June 2012 — Unister v OHIM (Ab in den Urlaub)

(Case T-273/12)

(2012/C 243/54)

*Language of the case: German***Parties**

Applicant: Unister GmbH (Leipzig, Germany) (represented by H. Hug and A. Kessler-Jensch, 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 3 April 2012 in Case R 2150/2011-1;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'Ab in den Urlaub' for services in classes 35, 39, 41 and 43 — Community trade mark application No 9 692 286

Decision of the Examiner: Registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

- Infringement of Article 7(1)(b) of Regulation No 207/2009
- Infringement of Article 7(3) of Regulation No 207/2009

Action brought on 15 June 2012 — Alfastar Benelux v Council

(Case T-274/12)

(2012/C 243/55)

*Language of the case: English***Parties**

Applicant: Alfastar Benelux (Ixelles, Belgium) (represented by: N. Keramidas and N. Korogiannakis, lawyers)

Defendant: Council of the European Union

Form of order sought

- Declare and rule that the defendant has failed to fulfil its obligation under Article 266 TFEU, since, despite having been formally invited to do so, it failed to take any measure to comply with the judgment of the General Court of the European Union issued on 20 October 2011 in Case T-57/09 *Alfastar Benelux v Council* and to define its position in that regard within the time limit set thereon;
- Order the defendant to take all necessary measures to comply with the judgment of the General Court of the European Union issued on 20 October 2011 in Case T-57/09 *Alfastar Benelux v Council* and to define its position in that regard;
- Order the defendant to pay to the applicant damages for the amount of EUR 20 000 based on Article 340 TFEU; and
- Order the defendant to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the defendant failed to fulfil its obligation under Article 266 TFEU, since, despite having been formally invited to do so, it failed to take any measure to comply with the judgment of the General Court of the European Union issued on 20 October 2011 in Case T-57/09 *Alfastar Benelux v Council* and to define its position in that regard within the time limit set thereon.