

Judgment of the General Court of 8 September 2016 — Merck v Commission

(Case T-470/13) ⁽¹⁾

(Competition — Agreements, decisions and concerted practices — Market for antidepressant medicinal products containing the active pharmaceutical ingredient citalopram — Concept of restriction of competition ‘by object’ — Potential competition — Generic medicinal products — Barriers to market entry resulting from the existence of patents — Agreements concluded between a patent holder and a generic undertaking — Error of law — Error of assessment — Imputability of infringements — Liability of a parent company for infringements of the competition rules committed by its subsidiaries — Legal certainty — Reasonable time — Fines)

(2016/C 383/16)

Language of the case: English

Parties

Applicant: Merck KGaA (Darmstadt, Germany) (represented initially by B. Bär-Bouyssière, K. Lillerud, L. Voldstad, B. Marschall, P. Sabbadini, R. De Travieso, M. Holzhäuser and S. O, lawyers, M. Marelus, Solicitor, and R. Kreisberger and L. Osepciu, Barristers, and subsequently by B. Bär-Bouyssière, L. Voldstad, M. Holzhäuser, A. Cooke, M. Gampp, lawyers, M. Marelus, R. Kreisberger and L. Osepciu)

Defendant: European Commission (represented initially by J. Bourke, F. Castilla Contreras and T. Vecchi, and subsequently by F. Castilla Contreras, T. Vecchi, B. Mongin and C. Vollrath, acting as Agents, assisted by S. Kingston, Barrister)

Intervener in support of the defendant: Generics (UK) Ltd (Potters Bar, United Kingdom) (represented initially by G. Drauz, M. Rosenthal and B. Record, lawyers, and subsequently by G. Drauz and M. Rosenthal)

Re:

Application for annulment of Commission Decision C(2013) 3803 final of 19 June 2013 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case AT.39226 — Lundbeck), and for reduction of the amount of the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Merck KGaA to bear its own costs and those incurred by the European Commission;
3. Orders Generics (UK) Ltd to bear its own costs.

⁽¹⁾ OJ C 325, 9.11.2013.

Judgment of the General Court of 7 September 2016 — Victor international v EUIPO — Ovejero Jiménez and Becerra Guibert (VICTOR)

(Case T-204/14) ⁽¹⁾

(EU Trade Mark — Opposition proceedings — Application for the EU word mark VICTOR — Earlier national figurative mark victoria — Relative ground for refusal — Genuine use of the earlier mark — Nature of use — Form differing in elements which do not alter the distinctive character — Article 15(1) and Article 42(2) and (3) of Regulation (EC) No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2016/C 383/17)

Language of the case: English

Parties

Applicant: Victor International GmbH (Elmshorn, Germany) (represented by: R. Kaase and J.-C. Plate, lawyers)

Defendant: European Union Intellectual Property Office (represented by: J. García Murillo and A. Folliard-Monguiral, acting as Agents)

Other parties to the proceedings before the Board of Appeal of EUIPO, interveners before the Court: Gregorio Ovejero Jiménez (Alicante, Spain) and María Luisa Cristina Becerra Guibert (Alicante) (represented by: M. Veiga Serrano, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 22 January 2014 (Case R 2208/2012-2), relating to opposition proceedings between Mr Ovejero Jiménez and Ms Becerra Guibert, on the one hand, and Victor International, on the other.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Victor International GmbH to pay the costs.*

⁽¹⁾ OJ C 245, 28.7.2014.

Judgment of the General Court of 7 September 2016 — Beiersdorf v EUIPO (Q10)

(Case T-4/15) ⁽¹⁾

(EU trade mark — Application for EU figurative mark Q10 — Refusal to register a disclaimer as to the scope of the protection — Article 37(2) of Regulation (EC) No 207/2009 — Absolute grounds for refusal — Descriptive Character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation No 207/2009)

(2016/C 383/18)

Language of the case: German

Parties

Applicant: Beiersdorf AG (Hamburg, Germany) (represented initially by: A. Renck and J. Fuhrmann, and subsequently by J. Fuhrmann, lawyers)

Defendant: European Union Intellectual Property Office (represented by: S. Hanne, acting as Agent)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 8 October 2014 (Case R 2050/2013-1), relating to an application for registration of the figurative sign Q10 as an EU trademark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Beiersdorf AG to bear its own costs and to pay those incurred by the European Union Intellectual Property Office (EUIPO).*

⁽¹⁾ OJ C 65, 23.2.2015.