

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and 7(2) CTMR.

Action brought on 27 January 2014 — Stührk Delikatessen Import v Commission

(Case T-58/14)

(2014/C 129/32)

Language of the case: German

Parties

Applicant: Stührk Delikatessen Import GmbH & Co. KG (Marne, Germany) (represented by: J. Sparr, lawyer)

Defendant: European Commission

Form of order sought

- Annul Commission Decision C(2013) 8286 final of 27 November 2013 in Case AT.39633 — Shrimps, notified to the applicant on 29 November 2013, in so far as it concerns the applicant;
- in the alternative, cancel in its entirety the fine imposed on the applicant;
- in the further alternative, reduce the amount of the fine imposed on the applicant and set a fine not exceeding EUR 188 300;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies, inter alia, on the following pleas in law:

- The Commission erred in assuming that the applicant participated in an overall cartel in the Netherlands, Belgium, France and Germany, as the applicant merely took account of the price range provided by two undertakings with significant market power in respect of a customer in Northern Germany and, therefore, merely participated in an anti-competitive agreement which, in geographical and substantive terms, was very limited.
- The applicant submits that it neither supported nor was aware of the other participants' price and volume agreements or customer allocation agreements identified by the Commission in respect of the markets in the Netherlands, Belgium and France.
- The applicant submits that the Commission failed in part to have regard to correctly established facts and erred in part in its assessment of those facts, contrary to the dates and substance of those facts. In that regard the applicant also complains of a failure to take into account numerous mitigating circumstances in the context of the determination of the amount of the fine.
- The applicant further maintains that the Commission's 2006 Guidelines on the method of setting fines and their application are unlawful and contrary to the principle of precision and the framework established by the legislature for the setting of fines.

- In the alternative, the applicant relies on the fact that, in the proceedings at issue, the Commission departed materially from the methodology of the Guidelines on fines. It thus failed to have regard to the fact that it was bound by its own guidelines and thereby exceeded the bounds of its discretion. Furthermore, in this particular case, the Commission arbitrarily set the fines imposed on the participants, and granted the main participants and instigators of the overall cartel identified by the Commission greater reductions than it granted the applicant, contrary to its own findings regarding the respective gravity of the infringements.

Action brought on 23 January 2014 — Blackrock v OHIM (INVESTING FOR A NEW WORLD)

(Case T-59/14)

(2014/C 129/33)

Language of the case: English

Parties

Applicant: Blackrock, Inc. (New York, United States) (represented by: S. Malynicz, Barrister, K. Gilbert and M. Blair, Solicitors)

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 First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 October 2013 given in Case R 573/2013-1;
- Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'INVESTING FOR A NEW WORLD' for services in Classes 35 and 36 — Community trade mark application No 11 144 706

Decision of the Examiner: Found the trade mark applied for not eligible for registration

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and 7(2) CTMR.

Action brought on 28 January 2014 — Monster Energy v OHIM — Balaguer (icexpresso + energy coffee)

(Case T-61/14)

(2014/C 129/34)

Language in which the application was lodged: English

Parties

Applicant: Monster Energy Company (Corona, United States) (represented by: P. Brownlow, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Luis Yus Balaguer (Movera, Spain)