

5. Fifth plea in law: invalidity of the invoices issued on the basis of the contested decision

- On the basis of the declaration of annulment of ECHA Decision No SME (2016) 2851, the invoices forming the basis of ECHA's payment requests must be declared invalid. The fees charged are also not owed because, at the time when ECHA Decision No SME (2016) 2851 was adopted and the invoices were issued, the applicant was not under any obligation to register in the REACH system.

Action brought on 1 September 2016 — Shoe Branding Europe v EUIPO — adidas (Device of two parallel stripes on a shoe)

(Case T-629/16)

(2016/C 402/62)

Language in which the application was lodged: English

Parties

Applicant: Shoe Branding Europe BVBA (Oudenaarde, Belgium) (represented by: J. Løje, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: adidas (Herzogenaurach, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: position mark (Device of two parallel stripes on a shoe) — EU trade mark No 8 398 141

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 8 June 2016 in Case R 597/2016-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 8(5) of Regulation No 207/2009;
- Distortion of facts.

Action brought on 5 September 2016 — Dehtochema Bitumat v European Chemicals Agency

(Case T-630/16)

(2016/C 402/63)

Language of the case: Czech

Parties

Applicant: Dehtochema Bitumat, s.r.o. (Bělá pod Bezdězem, Czech Republic) (represented by: P. Holý, lawyer)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

- annul and declare to be invalid the decision of the European Chemicals Agency of 7 July 2016, according to which the applicant is to continue to be considered a large enterprise and as a result of which the applicant is not entitled to the fee reduction for a medium-sized enterprise, and allow the implementation of that decision to be deferred.

Pleas in law and main arguments

According to the applicant, the defendant by the abovementioned decision and its actions misused its power and infringed the principles of legality and legal certainty.

The applicant claims that in verifying the status of a small or medium-sized enterprise (SME), the defendant incorrectly assessed the independence of the applicant's enterprise and incorrectly included in the calculation a number of employees and an amount of the applicant's enterprise's annual turnover plus allegedly linked or partner enterprises, which are not linked with the applicant's enterprise or its partner enterprises under Commission Regulation (EC) No 340/2008 or Commission Recommendation 2003/361/EC.

The applicant submits that its declaration as to the incorrect size of the enterprise, which it made at the defendant's request dated 2 June 2016, was essentially made with confidence in the defendant's assessment and with the promise of a lower fee.

The applicant points out that its registration had been suspended and it had expressly informed the defendant that it has not produced the relevant products (substances subject to registration) since 2011.

The applicant claims that it follows from Article 13(4) of Commission Regulation (EC) No 340/2008 that the right to a fee reduction on registration arises where it is possible to demonstrate such an entitlement and that it is thus appropriate, contrary to what is contended by the defendant, to allow the applicant to establish that entitlement.

Action brought on 9 September 2016 — ClientEarth v Commission**(Case T-644/16)**

(2016/C 402/64)

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

Applicant: ClientEarth (London, United Kingdom) (represented by: O. Brouwer, lawyer, and N. Frey, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the defendant's decision to refuse access to the requested documents pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council, and Commission documents, ⁽¹⁾ as communicated to the applicant on 1 July 2016 in a letter with the reference C(2016) 4286 final;
- order the Commission to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.