

Action brought on 3 September 2018 — Global Silicones Council and Others v ECHA**(Case T-519/18)**

(2018/C 399/57)

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

Applicants: Global Silicones Council (Washington, D.C., United States) and 6 others (represented by: R. Cana, F. Mattioli, G. David, lawyers, and D. Abrahams, Barrister)

Defendant: European Chemicals Agency

Form of order sought

The applicants claim that the Court should:

- declare the application admissible and well-founded;
- annul the contested decision,⁽¹⁾ in so far as it includes all three of the substances Octamethylcyclotetrasiloxane ('D4'), Decamethylcyclopentasiloxane ('D5') and Dodecamethylcyclohexasiloxane ('D6') in the candidate list of substances of very high concern;
- alternatively, annul the contested decision with regard to one or more of those inclusions in the candidate list;
- order the defendant to pay the costs of these proceedings; and
- take such other or further measures as justice may require.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant manifestly erred in its assessment of the Bioaccumulative ('B') properties of D4, D5 and D6, and in its assessment of the Toxic ('T') properties of D5 and D6 and exceeded its competence as well as breached Article 59 of Regulation 1907/2006:

- by relying on the MSC and RAC opinions without making its own assessment of the information at hand and thereby importing the vitiating errors in those opinions;
- by concluding that D4, D5 and D6 meet the vPvB criteria in Annex XIII although persistence (P) and bioaccumulation (B) were not established for the same compartment;
- by not taking into consideration the specific nature of D4, D5 and D6 (their 'hybrid' nature) when applying the criteria laid down in Annex XIII for bioaccumulation;
- by reaching conclusions on the bioaccumulation (B/vB) of D4 and D5 which the evidence relied upon is not capable of sustaining;
- by failing to assess the new evidence on bioaccumulation (B/vB) for D4 and D5 available to it after the MSC and RAC opinions;
- by failing to take into account all relevant information in concluding on the bioaccumulation (vB) of D6;
- by failing to consider the information on the toxicity of D5 itself and instead identifying D5 as PBT based on the presence of D4 as an impurity, and by identifying D5 as PBT without the specific limits on the content of D4 agreed upon by the MSC;

- by failing to consider the information on the toxicity of D6 itself and instead identifying D6 as PBT based on the presence of D4 as an impurity, and by identifying D6 as PBT without the specific limits on the content of D4 agreed upon by the MSC.
2. Second plea in law, alleging that the contested decision breaches the principle of proportionality, since the inclusion in the candidate list would have exceeded the limits of what is appropriate and necessary to attain the objective pursued and is not the least onerous measure to which the defendant could have had recourse.

⁽¹⁾ Decision published on 27 June 2018 of the European Chemicals Agency 'Inclusion of substances of very high concern in the Candidate List for eventual inclusion in Annex XIV', in so far as it includes three substances Octamethylcyclotetrasiloxane (D4), Decamethylcyclopentasiloxane ('D5') and Dodecamethylcyclohexasiloxane ('D6') in the Candidate List of substances of very high concern pursuant to Article 59 of the Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 30.12.2006 L 396, p 1)

Action brought on 29 August 2018 — Billa v EUIPO — Boardriders IP Holdings (Billa)

(Case T-524/18)

(2018/C 399/58)

Language of the case: English

Parties

Applicant: Billa AG (Wiener Neudorf, Austria) (represented by: J. Rether, M. Kinkeldey, J. Rosenhäger, S. Brandstätter, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Boardriders IP Holdings LLC (Huntington Beach, California, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union word mark Billa — Application for registration No 11 592 623

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 21 June 2018 in Case R 2235/2017-4

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 Articles 8(1)(b), 46 and 71 of Regulation No 2017/1001 of the European Parliament and of the Council in connection with Articles 2(2)(i) and 27(2) of Commission Delegated Regulation No 2017/1430.
-