

3. Third plea in law, alleging that the Commission infringed the applicants' rights of defence by (1) refusing to calculate and disclose their normal value contrary to Articles 20(2) and (4) of the Basic Regulation; and Article 12.2 of the WTO Anti-Dumping Agreement; and (2) not disclosing the information it used for the calculation of the applicants' dumping and injury margins.

⁽¹⁾ OJ 2020 L 65, p. 9.

⁽²⁾ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

Action brought on 12 May 2020 — CWS Powder Coatings v Commission

(Case T-279/20)

(2020/C 222/38)

Language of the case: German

Parties

Applicant: CWS Powder Coatings GmbH (Düren, Germany) (represented by: R. van der Hout, C. Wagner and V. Lemmonier, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission Delegated Regulation (EU) 2020/217, ⁽¹⁾ in so far as it concerns the classification and labelling of titanium dioxide;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law.

1. First plea in law, alleging that the Commission infringed Article 53c of Regulation (EC) No 1272/2008 of the European Parliament and the Council ⁽²⁾ by adopting a single act for different matters.
2. Second plea in law, alleging that the classification of titanium oxide carried out in the contested regulation does not comply with the classification requirements pursuant to Article 53a, Article 37(5) and Article 3(1) of Regulation No 1272/2008, read in conjunction with point 3.6.2.2 of Annex I to that regulation.
3. Third plea in law, alleging that the amendment to Annex II of Regulation No 1272/2008 as regards liquid mixtures with a titanium dioxide component cannot be made on the basis of Article 53(1), read in conjunction with Article 53a, of that regulation.
4. Fourth plea in law, alleging that the amendment to Annex II of Regulation No 1272/2008 as regards solid mixtures with a titanium dioxide component cannot be made on the basis of Article 53(1), read in conjunction with Article 53a, of that regulation.
5. Fifth plea in law, alleging that the Commission infringed its obligation to carry out an impact assessment prior to the adoption of the contested regulation.
6. Sixth plea in law, alleging that the contested regulation infringes the principle of proportionality, since the classification of certain titanium dioxide particles and the laying down of labelling obligations is not appropriate for the purpose of attaining the objective (health protection) and there are less onerous means available.

7. Seventh plea in law, alleging that the Commission made several significant errors of assessment in the adoption of the contested regulation.
8. Eighth plea in law, alleging that, by adopting the contested regulation, the Commission exceeded the powers conferred on it.
9. Ninth plea in law, alleging that, in the event that the Court were to find that, in the adoption of the contested regulation, the Commission may itself define the requirements for a classification or the subject of a classification, or that it was left with no scope for an impact assessment or a proportionate application, Article 37(5), Article 53(1) and Article 53a of Regulation No 1272/2008 would infringe Article 290(1) and (2) TFEU. In that case, invoking the basic act (Regulation No 1272/2008) of the contested regulation would infringe Article 290 TFEU.

(¹) Commission Delegated Regulation (EU) 2020/217 of 4 October 2019 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures and correcting that Regulation (OJ 2020 L 44, p. 1).

(²) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1), as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019 adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union (OJ 2019 L 198, p. 241).

Action brought on 13 May 2020 — Klaus Berthold v EUIPO — Thomann (HB Harley Benton)

(Case T-284/20)

(2020/C 222/39)

Language in which the application was lodged: German

Parties

Applicant: Klaus Berthold Besitzgesellschaft GmbH & Co. KG (Thalhausen, Germany) (represented by: E. Strauß, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Thomann GmbH (Burgebrach, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: International registration designating the European Union in respect of the figurative mark HB Harley Benton — International registration designating the European Union No 1 380 752

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 11 March 2020 in Case R 1359/2019-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and allow the opposition against the registration of international registration No 1 380 752 in the European Union for the goods in Class 25;
- order EUIPO to refuse the registration of international registration No 1 380 752 in the European Union for the goods in Class 25;