

— order the Defendant to pay the costs of the proceedings.

*Pleas in law and main arguments*

The applicant is a truck and bus manufacturer. By means of the contested decisions, the Commission refused to enforce an immediate divestiture of the shareholding of AB Volvo in Scania AB and refused to communicate to the applicant the confidential terms of the divestiture of the Shareholding of AB Volvo in Scania AB as stipulated in the AB Volvo/Renault Véhicule Industriel (VI) decision. On the basis of these Commission Decisions, AB Volvo has been able to maintain a dominant position vis-à-vis Scania for almost 4 years.

In support of its claim, the applicant invokes Articles 8 (4), 6 and 18(3) of the Merger Regulation (<sup>1</sup>).

According to the applicant, the Commission infringed Article 8 (4) of the Merger Regulation by refusing to enforce an immediate divestiture at the applicant's request. The applicant argues that the minority shareholding of AB Volvo constitutes de jure and de facto, sole or joint control with investor AB over Scania which should have been stopped by the Commission.

Furthermore, the applicant invokes Article 6 of the Merger Regulation. The applicant submits that the Commission should have revoked the Volvo/Renault decision and reviewed the terms of the divestiture. The applicant alleges that Volvo infringed its undertaking pertaining to the divestiture when participating in the decision-making process of Scania.

The applicant also claims that the Commission should have disclosed to Scania the information relating to the confidential approved terms of the divestiture as stipulated in the Volvo/Renault (VI) decision. The applicant claims to be a directly involved party to whom the Commission should have granted access to the information contained in the Volvo/Renault decision.

Finally, the applicant argues that any prolongation for the accomplishment of the divestiture from 2003 to 2004 is not automatic but should have been assessed and justified by the Commission.

(<sup>1</sup>) Council Regulation (EEC) No 4064/89 of 21.12.1989 on the control of concentrations between undertakings (JO L 257, p. 13).

**Action brought on 8 May 2003 by Ampafrance SA against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-164/03)**

(2003/C 184/86)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before

the Court of First Instance of the European Communities on 8 May 2003 by Ampafrance SA, established in Cholet (France), represented by C. Bercial Arias, lawyer.

Johnson & Johnson GmbH was also a party to the proceedings before the First Board of Appeal.

The applicant claims that the Court should:

— annul or vary those parts of the decision given by the First Board of Appeal of the defendant on 4 March 2003 in Case R 220/2002-1 in which the applicant's claims were not upheld and, consequently, rule that 'babies' napkins of absorbent cotton' are not similar to the goods covered by the German trade mark 'bebe' (No 1 168 346), that there are no similarities liable to lead to a likelihood of confusion between the marks 'bebe' and 'monBeBe' (logo) and that Community trade mark application No 297 309 is to be registered in its entirety;

— order the defendant to pay the costs.

*Pleas in law and main arguments*

Applicant for Community trade mark: Ampafrance SA

Community trade mark sought: Mixed word and figurative mark 'monbébé' — Application No 297 309, lodged in respect of goods in Classes 3, 5, 8, 10, 11, 12, 18, 20, 21, 22, 24, 25 and 28.

Proprietor of mark or sign cited in the opposition proceedings: Johnson & Johnson GmbH

Mark or sign cited in opposition: National trade mark 'bebe', registered for goods in Classes 3, 16 and 24.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Partial annulment of the decision of the Opposition Division and partial rejection of the application for registration as regards certain goods such as soaps etc; dismissal of the remainder of the appeal

Pleas in law: Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).