

Action brought on 10 December 2004 by Pergan GmbH against the Commission of the European Communities

(Case T-474/04)

(2005/C 45/59)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 December 2004 by Pergan GmbH, Bocholt (Germany), represented by M. Klusmann and F. Wiemer, lawyers.

The applicant claims that the Court should:

1. annul Decision SG-Greffe (2004) D/204343 of 1 October 2004 in so far as the applicant's request for removal of all references to the applicant in the definitively published version of the Commission's decision of 10 December 2003 imposing fines in Case COMP/E-2/37.857 – Organic Peroxides was refused;
2. order the Commission to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission refused in part the applicant's request of 13 July 2004 for removal of all references to conduct of the applicant allegedly contrary to cartel law in the definitively published version of the Commission's decision of 10 December 2003 imposing fines in Case COMP/E-2/37.857 – Organic Peroxides.

In support of its action, the applicant claims, first, that, under Article 21 of Regulation No 17/62, the published version of a decision imposing fines for an infringement may name only the participating undertakings. Since the applicant was not the addressee of the decision imposing fines, the Commission is prohibited from publishing its findings in respect of the applicant. Moreover, it was impermissible for the Commission to assume that a decision finding an infringement on the part of the applicant would be adopted. In the applicant's view, the Commission has no competence under Regulation No 17/92 to adopt such a decision and is unable to establish a legitimate interest in doing so. Finally, the applicant alleges infringement of the right to an effective legal remedy laid down in the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union. In that connection, the applicant argues that, although the Commission alleges that it is guilty of comprehensive breaches of cartel law, it omitted to address the decision imposing fines to it and thus restricted its ability to avail itself of a legal remedy.

Action brought on 23 December 2004 by Bodegas Franco-Españolas S.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-501/04)

(2005/C 45/60)

(Language of the case: Spanish)

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 23 December 2004 by Bodegas Franco-Españolas S.A., of Logrono (Spain), represented by María Emilia López Camba, of the Madrid Bar,

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of OHIM of 25 October 2004, in Case R 513/2002-1;
- order OHIM to pay the costs.

Pleas in law and main arguments:

Applicant for the Community mark:	The applicant
Community mark applied for:	Word mark Royal, for goods in Class 33 (alcoholic beverages, except beers).
Holder of the mark or sign relied on in the opposition proceedings:	Companhia General da Agricultura das Vinhas do Alto Douro S.A.
Opposing mark or sign:	Portuguese figurative mark ROYAL BRANDE, No 122 170, Community word mark ROYAL FEITORIA, No 418.301 and international word mark ROYAL OPORTO WINE COMPANY (PORTUGAL), No 174 788, for goods in Class 33.
Decision of the Opposition Division:	Opposition upheld on the basis of Community mark No 418 301 and application for registration dismissed.
Decision of the Board of Appeal:	Appeal dismissed.
Grounds:	Incorrect interpretation of Article 8(1)(b) of Regulation (EC) No 40/94.