Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2006) 5700 final of 29 November 2006 in Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber, by which the Commission found that the applicant, together with other undertakings, had infringed Article 81 EC and Article 53 of the Agreement on the European Economic Area by agreeing on price targets for the products, sharing customers by non-aggression agreements and exchanging commercial information relating to prices, competitors and customers.

In support of its application, the applicant submits that the Commission:

— committed an error of appreciation by rejecting the evidence that the applicant's holding of all the shares of the company Kaučuk was of a purely financial nature or, alternatively, committed a manifest error of appreciation by rejecting evidence which demonstrated that Kaučuk acted on the market as an autonomous entity, without any intervention by the applicant in Kaučuk's sales and marketing policy concerning emulsion styrene butadiene rubber; and

— erred in law by imputing the same conduct twice to different entities, i.e. to Kaučuk and to Kaučuk's shareholder, the applicant.

The rest of the pleas in law and main arguments raised by the applicant are identical or similar to those raised in Case T-44/07, *Kaučuk* v *Commission*.

Action brought on 21 February 2007 — ratiopharm GmbH v OHIM (BioGeneriX)

(Case T-47/07)

(2007/C 82/104)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented by Rechtsanwalt S. Völker)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 20 December 2006 in appeal No. R1047/2004-4 concerning Community trade mark application No. 001701762.

— Order the Office for Harmonisation in the Internal Market to pay its own costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark BioGeneriX for goods and services in the classes 5, 35, 40 and 42 (Application No. 1 701 762).

Decision of the Examiner: Refusal to register.

Decision of the Board of Appeal: Rejection of the appeal.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No. 40/94 ([1]), on the basis that the trade mark applied for demonstrates the minimum distinctive character required and that there is no specific need for availability.

([1]) Council Regulation No. 40/94 of 20 December 1993 on the Community trade mark (OJ 1994, L 11, p. 1).

Action brought on 21 February 2007 — ratiopharm v OHIM (BioGeneriX)

(Case T-48/07)

(2007/C 82/105)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented by S. Völker, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The applicant claims that the Court should

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 December 2006 in Case R 1048/2004-4 concerning the application for Community trade mark No 002603124;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'BioGeneriX' for goods in Classes 1 and 5 (Application No 2 603 124).

Decision of the Examiner: Refusal of part of the application for registration.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Breach of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 ([1]), as the trade mark applied for has the requisite minimum level of distinctiveness and there is no need to preserve its availability.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 14 February 2007 — Movimondo Onlus v Commission

(Case T-52/07)

(2007/C 82/106)

Language of the case: Italian

Parties

Applicant: Movimondo Onlus (Rome, Italy) (represented by: P. Vitali, G. Verusio, G.M. Roberti and A. Franchi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the contested Decision;

— in the alternative, declare, pursuant to Article 241 EC, that Articles 133 and 175 of Commission Regulation No 2342/2002 of 23 December 2002 are unlawful and inapplicable;

— order the Commission to pay the costs.

Pleas in law and main arguments

1. By the present action, the Associazione Movimondo ONLUS — a non-governmental organisation for international cooperation and solidarity — seeks, in accordance with the fourth paragraph of Article 230 EC, annulment of the Commission's decision of 1 December 2006 (prot. C (2006) 5802 final) imposing an administrative penalty on the non-governmental organisation (NGO) Movimondo for serious breach of professional ethics and non-performance of contractual obligations.

2. In that connection, it should be pointed out that contractual relations with the Commission in the case of humanitarian aid and actions in the field of development cooperation are governed by contracts called *Grant Agreements*, concluded in accordance with *Framework Partnership Agreements* (FPAs) and general contract conditions. In particular, the ECHO FPAs concerned by the events in relation to which the Commission intended to impose the contested penalty are the following:

   — FPA No 3-134, signed on 6 November 2003;

   — FPA No CCP 99/0119 of 26 February 1999.

3. In support of its action for annulment of the decision of 1 December 2006, Movimondo puts forward five pleas in law.

   By the first plea, the applicant alleges infringement of provisions of law in relation to Articles 93, 96 and 114 of Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, and raises a plea of illegality in respect of Articles 133 and 175 of Commission Regulation 2342/2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002 on the ground that they infringe Article 183 of Council Regulation No 2988/1995 of 18 December 1995.

   By the second plea, the applicant alleges that the Commission made an erroneous and incomplete assessment of the factual basis for the allegations against the applicant, and maintains that there was no conclusive evidence on which to base the decision imposing a penalty.

   By the third plea, the applicant alleges breach of the general principle of *audi alteram partem*.

   By the fourth plea, the applicant alleges an error of assessment of the facts on which the penalty was based and attribution in relation to the applicant of non-existent circumstances. At the same time, it alleges breach of the principle of proportionality and failure properly to state the grounds for its decision as regards the 'effective, proportionate and dissuasive nature' [of the penalty] as required under Article 114 of Regulation No 1605/2002 (the Financial Regulation).

   Lastly, by the fifth plea, the applicant alleges, first, that the projects constituting a *sine qua non* for the contested decision are of wholly indeterminate nature, and that the decision is time-barred. At the same time, it maintains that there is no Community act which provides for such a penalty and alleges infringement of Articles 2(2) and 3(1) of Council Regulation No 2988/95 of 18 December 1995. Secondly, it alleges infringement of Articles 175 and 133 of Commission Regulation No 2342/2002.