

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Sociedad Cooperativa del Campo San Ginés

#### Form of order sought

— The annulment of the decision of 6 November 2006 of the 2nd Board of Appeal of OHIM issued in case R36/2006-2 with costs awarded against OHIM

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* Sociedad Cooperativa del Campo San Ginés

*Community trade mark concerned:* Word mark 'TORRE DE BENITEZ' for products in class 33 (application No. 2.438.018)

*Proprietor of the mark or sign cited in the opposition proceedings:* Applicant

*Mark or sign cited in opposition:* International or national trade marks under the word mark 'Torres' for products in class 33, numerous other Community, international and national trade marks

*Decision of the Opposition Division:* Rejection of the opposition

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

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) 40/94 <sup>(1)</sup> given that there is a likelihood of confusion between the trade marks at issue

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

*Other party to the proceedings before the Board of Appeal of OHIM:* Bodegas Navarro López, S.L.

#### Form of order sought

— The annulment of the decision of the 1st Board of Appeal of OHIM of 26 September 2006 issued in case no R1407/2005-1 with costs awarded against OHIM

#### Pleas in law and main arguments

*Applicant for a Community trade mark:* Bodegas Navarro López, S.L.

*Community trade mark concerned:* Word mark 'CITA DEL SOL' for products and services within classes 33 and 39 (application No. 2.712.982)

*Proprietor of the mark or sign cited in the opposition proceedings:* Applicant

*Mark or sign cited in opposition:* Community word mark 'VIÑA SOL' (mark no 462.523) and national word marks 'VIÑA SOL' for products within class 33, label 'TORRES VIÑA SOL' for products within class 33, national word mark 'SOL' for products within class 33.

*Decision of the Opposition Division:* Rejection of objection

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

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 <sup>(1)</sup> given that there is a likelihood of confusion between the marks at issue.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

**Action brought on 16 January 2007 — Miguel Torres, S.L. v OHIM**

(Case T-17/07)

(2007/C 82/87)

*Language in which the application was lodged:* Spanish

#### Parties

*Applicant:* Miguel Torres, S.L. (Barcelona, Spain) (represented by: E. Armijo Chávarri, M. Baz de San Cerefino, A. Castán Pérez-Gómez, lawyers)

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

**Action brought on 6 February 2007 — ThyssenKrupp Stainless v Commission**

(Case T-24/07)

(2007/C 82/88)

*Language of the case:* German

#### Parties

*Applicant:* ThyssenKrupp Stainless AG (Duisburg, Germany) (represented by: M. Klusmann and S. Thomas)

*Defendant:* Commission of the European Communities

**Form of order sought**

- annul the contested decision;
- in the alternative, annul Article 2 of the operative part of that decision;
- in the further alternative, reduce the amount of the fine imposed on the applicant in the contested decision;
- order the defendant to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicant challenges Commission Decision C(2006) 6765 final of 20 December 2006 in Case COMP/39.234 — Alloy surcharge re-adoption. In the contested decision, which concerns the reopening of the proceeding in Case IV/35.814 — Alloy surcharge, a fine was imposed on the applicant for infringement of Article 65(1) CS by Thyssen Stahl GmbH (previously Thyssen Stahl AG) in that it agreed an alteration to the reference values used to calculate the alloy surcharge and applied that alteration.

The applicant raises ten pleas in law in support of its action:

- infringement of the principle of *nulla poena sine lege*, since, in the absence of transitional provisions, the Commission had no power to apply retroactively the CS Treaty which expired in 2002;
- unlawful application of Regulation (EC) No 1/2003 <sup>(1)</sup>, since it grants entitlement only to apply Articles 81 EC and 82 EC, but not the CS Treaty;
- infringement of the principal of *res iudicata*, since the Court of Justice has already given final judgment in the case to the effect that on the merits the applicant is not liable for the infringement of Thyssen Stahl AG which was alleged against it and attributed to it once more in the contested decision;
- lack of responsibility of the applicant by way of a private declaration of assumption of liability, since such a declaration is declaratory at most;
- infringement of the principle of legal certainty since the basis for the penalty and the basis for the attribution of liability are insufficiently certain;
- infringement of the principle of *ne bis in idem*, because a fine has been imposed on the applicant already in the first proceedings on the same facts, a matter on which the Court has given final judgment;
- the infringement is time barred;
- infringement of the right of access to the file;
- infringement of the right to be heard due to incomplete objections; and

- miscalculation of the fine in the light of the 1996 Leniency Notice <sup>(2)</sup>.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

<sup>(2)</sup> Commission Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4).

**Action brought on 7 February 2007 — LIPOR v Commission****(Case T-26/07)**

(2007/C 82/89)

*Language of the case: Portuguese***Parties**

*Applicant:* LIPOR — Serviço Intermunicipalizado de Gestão de Resíduos do Grande Porto (Gondomar, Portugal) (represented by: P. Pinheiro, M. Gorjão-Henriques and F. Quintela, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

- Annulment in part of Article 1 of Commission Decision C(06)5008 of 17 October 2006, addressed to the Portuguese State, in so far as it considers that the total assistance granted by the Cohesion Fund under Commission decisions Nos C(93)3347/3 of 7 December 1993, C(94)3721 final/3 of 21 December 1994 and C(96)3923 final of 17 December 1996, reproduced in Decision C(98)2283/f, must be regarded as reduced by EUR 1 511 591 and of the decision to order reimbursement of that amount to the Member State;
- annulment of Article 1 of the contested decision in so far as it orders a financial correction of 100 % in relation to the contracts concluded by the applicant with the IDAD (Instituto do Ambiente e Desenvolvimento, Environment and Development Institute) for breach of the principle of proportionality, and in so far as it orders the Member State to reimburse EUR 458 683;
- an order that the Commission should pay the costs of the proceedings, including the applicant's costs;
- as a subsidiary matter, annulment in part of Article 1 of the contested order for breach of the principle of proportionality, with regard to the contracts concluded by the applicant with Hidroprojecto;