

- order the defendant to pay to the applicant damages suffered by the applicant as a direct consequence adoption of Commission Regulation (EU) No 944/2013, of 2 October 2013, 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 (OJ 2013 L 261, p. 5), insofar as it classified pitch, coal tar, high temp as Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410), evaluated at a total amount of 1 022 172,00 EUR, or any other amount as further established by the applicant in the course of the proceedings or by the Court;
- in the alternative, rule on interlocutory judgment that the defendant is obliged to make reparation for the loss suffered and order the parties to produce to the Court, within a reasonable period from the date of the judgment, figures as to the amount of the compensation agreed between the parties or, failing the agreement, order the parties to produce to the Court within the same period their submissions with detailed figures in support;
- order the defendant to pay to the applicant compensatory interest at the default rate from the date of the losses suffered (i.e. either from the date of entry into force of the unlawful classification or from the date when the damage materialised);
- order the defendant to pay default interest of 8 %, or any other appropriate rate to be determined by the Court, calculated on the amount payable as from the date of the Court's judgment until actual payment; and
- order the defendant to pay all costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the defendant caused damage to the applicant by the adoption and entry into force of Commission Regulation (EU) No 944/2013, ⁽¹⁾ classifying the substance pitch, coal tar, high temp. as Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance. On 22 November 2017, the Court of Justice dismissed the appeal of the European Commission against the decision of the General Court to partially annul Regulation (EU) No 944/2013 insofar as it classified the substance pitch, coal tar, high temp. as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance due to a manifest error of assessment. The applicant incurred in costs to apply the unlawful classification. The defendant would be responsible for those costs pursuant to Articles 268 and 340 TFEU since the conduct of the defendant is unlawful in that it amounts to a sufficiently serious breach of law, the damage caused is actual and certain and there is a direct causal link between the conduct of the defendant and the damage relied upon.

⁽¹⁾ Commission Regulation (EU) No 944/2013, of 2 October 2013, 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 (OJ L 261, 3.10.2013, p. 5).

Action brought on 29 October 2018 — August Wolff v EUIPO — Faes Farma (DermoFaes)

(Case T-643/18)

(2019/C 16/63)

Language of the case: English

Parties

Applicant: Dr. August Wolff GmbH & Co. KG Arzneimittel (Bielefeld, Germany) (represented by: A. Thünken, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Faes Farma, SA (Lamiaco-Leioa, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: Application for European Union word mark DermoFaes — Application for registration No 15 069 289

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 14 June 2018 in Case R 1842/2017-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- uphold the opposition and reject the contested application;
- order EUIPO and, as the case may be, the intervener to bear the costs of the proceedings and the costs incurred by proceedings before EUIPO.

Plea in law

- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 23 October 2018 — Bilbaína de Alquitranes v Commission

(Case T-645/18)

(2019/C 16/64)

Language of the case: English

Parties

Applicant: Bilbaína de Alquitranes, SA (Luchana-Baracaldo, Vizcaya, Spain) (represented by: K. Van Maldegem, M. Grunchard, R. Crespi and S. Saez Moreno, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- declare the application admissible and well-founded;
- compensate the applicant for the damage caused to it by the defendant;
- order the defendant to pay the applicant damages suffered by the applicant as a direct consequence of adoption of Commission Regulation (EU) No 944/2013, of 2 October 2013, 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 (OJ 2013 L 261, p. 5), insofar as it classified pitch, coal tar, high temp as Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410), evaluated at a total amount of 488 871,30 EUR or any other amount as further established by the applicant in the course of the proceedings or by the Court;