In support of its action, the applicant claims that by establishing, in its Articles 3 and 4, a system of allocation of import licences based on historic references and on the introduction of non-traditional operators, Regulation No 2015/2005 infringes:

— the contractual framework of the banana market;

— the philosophy and principles enshrined in the Community provisions in respect of common agricultural policy and common organisation of the banana markets and the provisions themselves of the Community legislation in question;

— the principles enshrined in Articles 81 EC and 82 EC, in that it enables historic operators to abuse collectively the dominant position which, according to the applicant, is conferred on them by the regulatory provisions and in that it also encourages other anti-competitive practices on the Community banana market;

— the principles enshrined in Article 87 EC, in that its effect is to confer a substantial financial advantage selectively on certain historically important traditional importers, who are able to profit from the resale of licences wrongly obtained gratuitously;

— the principle of proportionality in that it does not permit the creation and development of the businesses of credible and viable non-traditional importers, who can survive only by relying on a traditional importer; in addition, the applicant claims that the regulation, annulment of which is sought, no longer enables ACP banana producers to take advantage in an equitable manner of the preference accorded to ACP bananas, since the system benefits excessively certain historically important traditional importers;

— the principle of non-discrimination in that it applies apparently equitable treatment to all traditional ACP importers, whilst in reality, it favours unduly certain historically important traditional importers.

Finally, the applicant also relies, in support of its claims, on breach of the principles of legitimate expectations and of the freedom to carry on business.

([1]) Regulation (EC) No 1964/2005 of 29 November 2005 on the tariff rates for bananas (OJ L 316 of 2.12.05).

([2]) Commission Regulation (EC) No 2015/2005 of 9 December 2005 on imports during January and February 2006 of bananas originating in ACP countries under the tariff quota opened by Council Regulation (EC) No 1964/2005 on the tariff rates for bananas (OJ L 324, p. 5).

([3]) Which is challenged by the applicant in Case T-128/05 pending before the Court of First Instance.

Action brought on 21 December 2005 — Automobiles Peugeot and Peugeot Nederland v Commission

(Case T-450/05)

(2006/C 74/48)

Language of the case: French

Parties

Applicants: Automobiles Peugeot SA (Paris, France) and Peugeot Nederland NV (Utrecht, Netherlands) (represented by: O. d'Ormesson and N. Zacharie, lawyers)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

— annul the Decision in the entirety of its operative part and the grounds supporrting it;

— alternatively, vary Article 3 of the Decision and the grounds supporting it by reducing the fine of EUR 49.5 million;

— order the Commission to pay the costs.

Pleas in law and main arguments

In this action the applicants seek the annulment of Commission Decision C(2005)3683 final of 5 October 2005 adopted as part of a procedure under Article 81 of the EC Treaty (Cases 36.623, 36.820 and 37.275 — SEP and Others/Automobiles Peugeot SA) by which the Commission found the practices applied by them intended to restrict exports of automobiles to be anti-competitive. The contested decision covers, in particular, the individual measures adopted by the applicants with regard to dealers: bonus system for dealers, policy restricting promotional campaigns, limited supplying of dealers, direct instructions. The applicants claim, in addition, alternatively, the reduction of the fine imposed by the Commission.

In support of their claims, the applicants submit that in its decision the Commission infringed the provisions of Article 81(1) of the EC Treaty, in that it found that the measures adopted by the applicants could be regarded as an 'agreement' within the meaning of that article.

In the alternative, they rely on pleas in law alleging errors of fact, erroneous assessment of the facts and error of law in that the Commission held that the system of payment of dealers had an anti-competitive object within the meaning of Article 81(1) of the EC Treaty. Moreover, the applicants call in question the determination of the length of the infringement made by the Commission in the contested decision in that the Commission made an error of fact and an erroneous assessment of the facts which led it, according to the applicants, to contradictions in the grounds of its decision.

The following plea in law covers the alleged insufficiency of the grounds of the contested decision so far as concerns the analysis of the effects of the measures alleged by the Commission. In addition, as part of that plea, the applicants accuse the Commission of having made errors of fact and an erroneous assessment of the facts and of having contradicted in the grounds of its decision.

In support of their alternative claim for the reduction of the fine imposed by the Commission, the applicants rely on a plea in law alleging infringement of Article 23(2) of Regulation No 1/2003 and of the Guidelines on the setting of fines ([1]) in the application of those provisions by the Commission.

([1]) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and of Article 65(5) of the EC Treaty (OJ C 9 of 14 January 1998, p. 3).

Action brought on 29 December 2005 — Bang & Olufsen/OHIM

(Case T-460/05)

(2006/C 74/49)

Language of the case: English

Parties

Applicant: Bang & Olufsen AS (Struer, Denmark) [represented by: K. Wallberg, lawyer]

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

Form of order sought

— The decision taken by the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) on 22 October 2005 in case No. R0497/2005-1 be annulled and

— the defendant pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Three-dimensional mark in form of a vertical pencil-shaped loudspeaker on a low pedestal for goods in classes 9 and 20 — application No 3 354 371

Decision of the examiner: Refusal of the application for all the claimed goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The mark is in accordance with Article 7(1)(b) of Council Regulation No 40/94 inherently distinctive for all the goods covered by the application and if not so, it has acquired distinctiveness through use in accordance with Article 7(3) of the Regulation.

Action brought on 30 December 2005 — L' Oréal/OHIM

(Case T-461/05)

(2006/C 74/50)

Language in which the application was lodged: English

Parties

Applicant: L'Oréal S.A. (Paris, France) [represented by: X. Buffet Delmas d'Autane, lawyer]

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

Other party/parties to the proceedings before the Board of Appeal: Revlon (Suisse) S.A. (Schlieren, Switzerland)

Form of order sought

— Annulment of the decision of the Fourth Board of Appeal of the OHIM of 17 October 2005 regarding the appeal R 0806/2002-4 relating to Opposition Proceedings No B 214 694 (Community trade mark Application No 1 011 014);

— Order for all costs incurred in relation to all proceedings in this matter (in particular, the costs of the action and the appeal) to be awarded against the OHIM.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'FLEXI TOUCH' for goods in class 3

Proprietor of the mark or sign cited in the opposition proceedings: Revlon (Suisse) S.A.