

— Alternatively, appoint an expert or a body of experts with responsibility for giving the Court guidance on whether or on what conditions the shape of a manufactured good or the representation of its outline can have as much influence on the public's memory of it as an accompanying term, as an indication of its business origin, and reserve the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative trade mark representing a bag in respect of goods in Class 18 (Application No 003598571)

Decision of the Examiner: Registration refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 4 and Article 7(1)(b) of Council Regulation No 40/94. The applicant argues that the trade mark has enough distinctive character to distinguish and characterise a bag or a range of bags from one undertaking from those from other undertakings.

Action brought on 3 March 2006 — Fox Racing/OHIM

(Case T-74/06)

(2006/C 108/44)

Language in which the application was lodged: English

Parties

Applicant: Fox Racing Inc. (Morgan Hill, USA) [represented by: P. Brownlow, Solicitor]

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

Other party to the proceedings before the Board of Appeal: Lloyd IP Limited (Penrith, United Kingdom)

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Markets (Trade Marks and Designs) ('OHIM'), of 8 December 2005 (Case R 1180/2004 — 1) in part, insofar as it rejected the application in respect of motorcycle and safety helmets and protective clothing for motorcyclists and cyclists (Class 9) and

clothing, namely jackets, raincoats, sweatshirts, jerseys, shirts, pants, blouses, tights, shorts, hats, caps, sweatbands, headbands, gloves, belts, shoes, boots, socks and aprons (Class 25);

— order OHIM to pay the costs of this application.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'SHIFT' for goods in classes 9, 16, 18 and 25 — application No 2419349

Proprietor of the mark or sign cited in the opposition proceedings: Lloyd Lifestyle Limited

Mark or sign cited: The Community figurative mark and earlier non-registered work mark 'Swift' and the national figurative mark 'Swift leathers' for goods in classes 9 and 25

Decision of the Opposition Division: Refuses registration

Decision of the Board of Appeal: Annuls the contested decision insofar as it rejected the application for 'pressure air gauges' and goods in classes 16 and 18; confirms the contested decision for the remainder

Pleas in law: Violation of Article 8(1)(b) of Council Regulation (EC) No 40/94.

Action brought on 24 February 2006 — Plásticos Españoles (Aspla) v Commission

(Case T-76/06)

(2006/C 108/45)

Language of the case: Spanish

Parties

Applicant: Plásticos Españoles S.A. (Aspla) (Torrelavega, Spain) (represented by: E. Garayar and A. García Castillo, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare the present action for annulment admissible;

- annul Decision C(2005) 4634 final, of 30 November 2005, in Case COMP/F/38.354 — Industrial bags, alternatively substantially reduce the amount of the fine imposed on Plásticos Españoles S.A.;
- order the Commission to pay the costs.

Pleas in law and main arguments

This action seeks annulment of Decision C(2005) 4634 final, of 30 November 2005, in Case COMP/F/38.354 — Industrial bags. In the contested decision, the Commission declared that the applicant, among other undertakings, had infringed Article 81 EC by having participated, between 1991 and 2002, in agreements and concerted practices in the industrial plastic bag sector in Germany, Belgium, the Netherlands, Luxemburg, Spain and France. For those infringements, the Commission imposed a fine on the applicant jointly and severally with the undertaking Armando Álvarez S.A..

In support of its claims the applicant puts forward the following pleas:

- error in the assessment of the facts by the Commission in relation to the scale of the applicant's conduct, to the scope of the product markets and geographic markets concerned and the product quotas which serve as a basis for calculating the fines;
- violation of Article 81(1) EC and the principle of legal certainty, on account of incorrect classification of the infringement as 'single and continuous' and incorrect determination of the responsibility of the undertakings sanctioned;
- in the alternative, violation of Article 81(1) EC and the principle of legal certainty and equal treatment on account of incorrect classification of the infringement as 'single and continuous' with respect to the applicant, incorrect assessment of the applicant's individual liability and discrimination as between itself and the undertaking Stempher B.V. which, according to the Commission, had also participated in the infringement in question;
- infringement of Article 15(2) of Regulation No 17/1962 ⁽¹⁾ and the Guidelines on the method of setting of fines on account of manifest error in the calculation of the fine imposed on the applicant and a manifest infringement of the principle of equal treatment and proportionality in determining the amounts.

⁽¹⁾ EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (English special edition: Series I Chapter 1959-1962 p. 87)

Action brought on 3 March 2006 — Budapesti Erőmű v Commission

(Case T-80/06)

(2006/C 108/46)

Language of the case: English

Parties

Applicant: Budapesti Erőmű 'Zártkörűen Működő Részvénytársaság' (Budapest, Hungary) [represented by: M. Powell, Solicitor, C. Arhold, K. Struckmann, lawyers]

Defendant: Commission of the European Communities

Form of order sought

- Annul the Decision of the European Commission to open the formal investigation procedure in Case State aid C 41/2005 (ex NN 49/2005) — Hungarian Stranded Costs — of 9 November 2005, or in the alternative to annul the Decision as far as the power purchase agreements concluded by the applicant are concerned;
- to award the applicant the costs of the present action;
- to take such other or further action as justice may require.

Pleas in law and main arguments

The applicant is a district heating supplier and electricity generator in Hungary. In the contested decision, the Commission decided to open a formal investigation procedure into alleged new State aid in the form of power purchase agreements concluded between Hungarian electricity generators and the public Hungarian transmission operator ⁽¹⁾.

In support of its application, the applicant submits that the Commission lacked competence to take the contested decision. According to the applicant, it follows from Annex 4, Chapter 3, Section 1 of the Accession Treaty ⁽²⁾ and Article 1(b) of Council Regulation No 659/1999 ⁽³⁾ that the Commission only has jurisdiction over aid measures which are still applicable after the date of accession of a new Member State. The applicant submits that the power purchase agreements were concluded prior to accession and are not still applicable after accession.