

Judgment of the General Court of 31 January 2013 — K2 Sports Europe v OHIM — Karhu Sport Iberica (SPORT)(Case T-54/12) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for the Community figurative mark SPORT — Earlier national and international word marks K2 SPORTS — Relative ground for refusal — No similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 79/32)

Language of the case: English

Parties

Applicant: K2 Sports Europe GmbH (Penzberg, Germany) (represented by: J. Güell Serra, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral and I. Harrington, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Karhu Sport Iberica, SL (Córdoba, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 November 2011 (Case R 986/2010-4), concerning opposition proceedings between K2 Sports Europe GmbH and Karhu Sport Iberica, SL.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders K2 Sports Europe GmbH to pay the costs.

⁽¹⁾ OJ C 109, 14.4.2012.

Action brought on 17 December 2012 — Miejskie Przedsiębiorstwo Energetyki Ciepłej v European Chemicals Agency

(Case T-560/12)

(2013/C 79/33)

Language of the case: Polish

Parties

Applicant: Miejskie Przedsiębiorstwo Energetyki Ciepłej sp. z o.o. (Brzesko, Poland) (represented by: T. Dobrzyński, legal adviser)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

- annul Decision SME(2012) 3538 of the European Chemicals Agency of 15 October 2012 imposing on the applicant an administrative charge of EUR 20 700;
- as a precautionary claim, annul Decision MB/D/29/2010 of ECHA's Management Board of 12 November 2010 on the classification of services for which charges are levied;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging failure to comply with Commission Regulation (EC) No 340/2008 and Regulation (EC) No 1907/2006 of the European Parliament and of the Council, and infringement of the principle of conferral
 - The contested decision is incompatible with the regulation on fees and charges because the defendant is entitled only to impose administrative charges, whereas the imposition of dissuasive fines is a matter for the Member States. Administrative charges must be appropriate in relation to the scope of the work carried out by ECHA. An administrative charge of EUR 20 700 for incorrect declaration of the undertaking's size has a punitive function and equates to a fine. The defendant thereby encroached upon the powers of the Member States, which is incompatible with the principle of conferral laid down in Article 5 TEU and constitutes action where there is a lack of competence within the meaning of Article 263 TFEU.
2. Second plea in law, alleging infringement of the principle of equality
 - The principle of equality laid down in Article 5 of the European Code of Good Administrative Behaviour and Article 41 of the Charter of Fundamental Rights of the European Union is infringed where the amount of an administrative charge is made conditional upon the size of an undertaking. Since an administrative charge serves by definition to cover the costs of the administration's services, there can be no objective justification for the introduction of a distinction according to the size of the undertakings registered. The administrative burden in verifying the size of the undertakings is similar. Accordingly, large undertakings which have incorrectly declared themselves as SMEs pay a charge which covers the costs not only of the service connected with the procedure for verifying their size but also of verifying the size of other undertakings, or which even covers the costs of other ECHA services.