

**Action brought on 30 September 2019 — Cinkciarz.pl v EUIPO (€\$)****(Case T-665/19)**

(2019/C 399/110)

*Language of the case: Polish***Parties**

*Applicant:* Cinkciarz.pl sp. z o.o. (Zielona Góra, Poland) (represented by: E. Skrzydło-Tefelska, legal counsel, and K. Gajek, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

**Details of the proceedings before EUIPO**

*Trade mark at issue:* Application for EU figurative mark €\$ — Application No 1 3 8 3 9 9 9 8

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 4 July 2019 in Case R 1 3 4 5/2018-1

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

**Pleas in law**

- Infringement of the first sentence of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, read in conjunction with Article 41(2)(c) of the Charter of Fundamental Rights of the European Union;
- Infringement of Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of Article 72(6) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of Article 7(1)(i) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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**Action brought on 30 September 2019 — Ferriere Nord v Commission****(Case T-667/19)**

(2019/C 399/111)

*Language of the case: Italian***Parties**

*Applicant:* Ferriere Nord SpA (Osoppo, Italy) (represented by: W. Viscardini, G. Donà and B. Comparini, lawyers)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

1. annul, under Article 263 of the Treaty on the Functioning of the European Union, European Commission Decision C(2019) 4969 final of 4 July 2019, notified on 18 July 2019, by which the applicant was ordered to pay a fine in the amount of EUR 2 237 000 following a procedure under Article 65 of the ECSC Treaty (AT.37.956 — Reinforcing bars);
2. in the alternative, annul Decision C(2019) 4969 final in part, thereby reducing the fine;
3. in any event, order the European Commission to pay the costs of the proceedings.

### Pleas in law and main arguments

In support of the action, the applicant relies on 11 pleas in law.

1. First plea in law, relating to 'Infringement of the rights of defence'

— The applicant submits in that regard that there has been an infringement of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union ('the Charter'), of Article 6 of the European Convention on Human Rights (ECHR), of Articles 14 and 27 of Regulation No 1/2003 and of Articles 11, 12, 13 and 14 of Regulation No 773/2004, since the hearing of 23 April 2018 did not remedy the infringement of essential procedural requirements criticised by the Court of Justice in its judgment of 21 September 2017 in Case C-88/15 P.

2. Second plea in law, relating to 'Failure to observe the principle *non bis in idem*'

— In that regard the applicant alleges infringement of Article 50 of the Charter since, despite the fact that the judgment of the Court of Justice set aside the judgment of the General Court — and, accordingly, the previous decision of the Commission — on procedural grounds, the General Court, nevertheless, ruled on the material facts complained of by the Commission. The Commission should not, therefore, have been able to adopt a new decision based on the same facts.

3. Third plea in law, relating to 'Misinterpretation and, accordingly infringement, of the obligation to ensure respect for the right to sound administration and the right for proceedings to be concluded within a reasonable time — Failure to state adequate reasons'

— The applicant submits in that regard that, in the light of Articles 41 and 47 of the Charter and of Article 6 of the ECHR, the Commission failed to provide adequate reasons for considering, and in any case wrongly considered, that it was not required to assess the reasonableness of the duration of the proceedings, asking the Court to make that assessment.

4. Fourth plea in law, relating to 'Failure to observe the principle that proceedings must be concluded within a reasonable time — Misuse of powers — Infringement of the rights of defence'

— The applicant submits in that regard that Articles 41 and 47 of the Charter and Article 6 of the ECHR were infringed since the Commission used inspection and sanctioning powers which it no longer had on account of the unreasonable duration of the proceedings, notwithstanding the prejudice — which was confirmed — to the rights of defence resulting from that unreasonable duration.

5. Fifth plea in law, relating to 'Defective or erroneous reasoning — Misuse of powers — Failure to observe the principle of proportionality — Infringement of Articles 41 and 47 of the Charter and of Article 6 ECHR'
  - The applicant submits in that regard that the Commission failed to show that it had a legitimate interest in the re-adoption of the decision, which is therefore *ultra vires*.
6. Sixth plea in law, relating to 'Plea of illegality under Article 277 TFEU in respect of Article 25 of Regulation No 1/2003 — Lapse of the inspection and sanctioning powers'
  - The applicant submits that Article 25 of Regulation No 1/2003 is unlawful since it is incompatible with the principle that proceedings must be concluded within a reasonable time and with the principle of proportionality.
7. Seventh plea in law, relating to 'Unlawfulness in part of the decision of 4 July 2019 in so far as regards the substance of the conduct at issue — Failure to observe the general principles concerning burden of proof and the principle of *in dubio pro reo*'
  - The applicant submits in that regard that some of the conduct ascribed to Ferriere Nord is not anti-competitive and in any event was not proven by the Commission.
8. Eighth plea in law, relating to 'Unlawfulness of the increase for repeated infringement, due to breach of the rights of defence'
  - The applicant submits in that regard that the increase of the fine to reflect repeated infringement is unlawful, since the Commission did not raise such aggravated circumstances either in the statement of objections or in any subsequent act in the resumed proceedings, thereby preventing the applicant from defending itself on that point.
9. Ninth plea in law, relating to 'Unlawfulness of the increase of the fine for repeated infringement, due to undue delay and failure to observe the principle of proportionality'
  - The applicant submits in that regard that even if the lapse of time between the establishment of the first infringement and the conduct complained of in the contested decision were not considered excessive, it must be borne in mind that, at the date of the re-adoption of the contested decision, 30 years had passed since the first infringement had been established.
10. Tenth plea in law, relating to 'Unlawfulness of the increase of the fine for repeated infringement, due to the excessive amount and failure to state reasons'
  - The applicant submits in that regard that a 50 % increase in the fine for repeated infringement is not justified, not least given the disproportionate duration of the proceedings.
11. Eleventh plea in law, relating to 'Failure to observe the principle of equal treatment in reducing the fine on the ground of mitigating circumstances'
  - The applicant submits that the reduction in the applicant's fine on the ground of mitigating circumstances is insufficient, since it is proportionately lower than the reduction awarded on the same ground to another undertaking.

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**Action brought on 1 October 2019 — Ardagh Metal Beverage Holdings v EUIPO (sound mark)**

**(Case T-668/19)**

(2019/C 399/112)

*Language of the case: German*

#### **Parties**

*Applicant:* Ardagh Metal Beverage Holdings GmbH & Co. KG (Bonn, Germany) (represented by: S. Abrar, lawyer)