

In the applicant's view, the contested decision and the questionnaire sent with it infringe the requirements of the general principle of precision, since, in many respects, they are unclear, uncertain and contradictory and do not contain any clear guidance for the applicant on how to proceed. The applicant is unable to determine, beyond doubt, what it is required to do in order to avert the risk of being sanctioned. The Commission failed to respond, or at least in a sufficient manner, to the applicant's extensive enquiries and requests for clarification.

5. Fifth plea in law: infringement of the applicant's rights of defence

The contested decision infringes the applicant's rights of defence which are laid down in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 48(2) of the Charter of Fundamental Rights of the European Union in so far as it requires the applicant's active involvement in the evaluation and analysis of company data, which are tasks falling within the Commission's duty to adduce evidence.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 14 June 2011 — Leopardi Dittajuti v OHIM — Llopert Vilarós (CONTE LEOPARDI DITTAJUTI)

(Case T-303/11)

(2011/C 238/50)

Language in which the application was lodged: English

Parties

Applicant: Piervittorio Francesco Leopardi Dittajuti (Numana, Italy) (represented by: D. De Simone, D. Demarinis, and G. Orsoni, lawyers)

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

Other party to the proceedings before the Board of Appeal: Pedro Llopert Vilarós (Sant Sadurní D'Anoia, Spain)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 April 2011 in case R 1437/2010-2, and consequently require the Office to take the necessary measures to comply with the given judgment; and
- Order the defendant to pay the costs of all instances of proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'CONTE LEOPARDI DITTAJUTI', for goods and services in classes 33, 35, 40, and 43 — Community trade mark application No 6428338

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Spanish trade mark registration No 2073540 of the figurative mark 'Leopardi', for goods in class 33

Decision of the Opposition Division: Upheld the opposition for part of the contested goods and services

Decision of the Board of Appeal: Rejected the appeal as inadmissible

Pleas in law: Misinterpretation of article 60 of Council Regulation No 207/2009, of Rules 49(1), 20(7)(c) of Commission Regulation (EC) No 2868/95, applicable to the appeal proceedings pursuant to Rule 50(1) of Commission Regulation (EC) No 2868/95, as the Board of Appeal: (i) incorrectly deemed not to grant a suspension of the proceedings and postponing the deadline as jointly requested by the parties; (ii) incorrectly took into account the parties' joint request only after the lapse of the deadline of submission of the statement of grounds, thus factually keeping the concerned party from submitting the same within the due date and causing the time-limit to expire; and (iii) infringement of the procedural requirements by the Board of Appeal, as it did not take into account the grounds of appeal, although the relevant statements had been submitted beyond the time-limit, also in breach of the general principle of procedural economy and of preservation of the validity of case-file records.

Action brought on 10 June 2011 — Schwenk Zement v Commission

(Case T-306/11)

(2011/C 238/51)

Language of the case: German

Parties

Applicant: Schwenk Zement KG (Ulm, Germany) (represented by: M. Raible, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul Commission Decision C(2011) 2367 final of 30 March 2011 (Case COMP/39520 — Cement and related products);
- in accordance with Article 87(2) of the Rules of Procedure of the General Court, order the Commission to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law: the form of the decision is disproportionate

The contested decision infringes the principle of proportionality since it constitutes the first measure of investigation adopted in relation to the applicant and the applicant was willing to provide information.

— It is true that Council Regulation (EC) No 1/2003⁽¹⁾ does not provide for a hierarchical relationship between simple requests for information and a decision requiring information. This does not change the fact, however, that the principle of proportionality is to be observed when opting for a measure of investigation.

— Compared with a decision requiring information pursuant to Article 18(3) of Regulation No 1/2003 a request for information pursuant to Article 18(2) of that regulation is the more lenient option and also constitutes an effective method in relation to undertakings which are willing to provide information.

2. Second plea in law: infringement of Article 18(3) of Regulation No 1/2003

The contested decision does not meet the requirements of the legal basis in Article 18(3) of Regulation No 1/2003

— The Commission does not set out any concrete allegations and the information requested largely does not coincide with what it claims to be its allegation.

— Therefore, the request for information is not necessary for the Commission's investigation. The information requested cannot constitute evidence of an infringement of cartel law.

3. Third plea in law: the time limit imposed was disproportionate

The two-week time limit within which to answer Question 11 was not sufficient for the applicant.

— The Commission reduced the time limit for answering question 11 from two months in its draft decision to two weeks in the contested decision without reasoning its decision to do so.

— It was impossible for the applicant to provide an answer within the two-week time limit. However, the Commission categorically rejected its request for an extension of that time limit.

— As a result of the breadth of the information requested, the difficulty in compiling the information and the individual situation of the applicant, a longer time limit was strictly necessary for it.

4. Fourth plea in law: insufficient grounds are given in the contested decision

The grounds for the contested decision are not stated in a proper manner.

— The contested decision does not set out the allegations made against the applicant. It also fails to state the connection between the information requested and the allegations made.

— Insufficient grounds are also given for the determination of the time limit in general and for the shortening of the time limit for answering question 11 from two months in its draft decision to two weeks in the contested decision.

5. Fifth plea in law: the applicant's rights of defence have been infringed

As a result of the time pressure exerted by the Commission, the applicant's rights of defence were infringed, in particular its right not to incriminate itself.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 13 June 2011 — Eurallumina v Commission

(Case T-308/11)

(2011/C 238/52)

Language of the case: Italian

Parties

Applicant: Eurallumina SpA (Portoscuso, Italy) (represented by V. Leone, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in its entirety the contested decision as it relates to Eurallumina; or

in the alternative,

— annul Article 2 of the contested decision, in relation to the measure adopted pursuant to the decree of 2004 and, in consequence, Article 3 of the contested decision in so far as it orders recovery from Eurallumina; or

— annul Article 3 of the contested decision, in so far as it orders recovery from Eurallumina; and

in any case

— order the Commission to pay the costs.

Pleas in law and main arguments

The application seeks annulment of the contested decision which: