

*Proprietor of the mark or sign cited in the opposition proceedings:* Unión de Agricultores, S.A.

*Mark or sign cited in opposition:* Community trade mark 'UNIAGRO' for goods in class 31.

*Decision of the Opposition Division:* Opposition partly upheld.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Breach of Article 8(1)(b) of Regulation No 40/94, in that OHIM misinterpreted that provision, and breach of Article 12(a) and (b) of Regulation No 40/94, in that the decision of OHIM prevents the applicant from using the name of its proprietor and the designation of the geographical origin of the goods.

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**Action brought on 24 September 2008 — CEAHR v Commission**

(Case T-427/08)

(2008/C 313/80)

*Language of the case:* English

**Parties**

*Applicant:* Confédération Européenne des Associations d'Horlogers-Réparateurs (CEAHR) (Brussels, Belgium) (represented by: P. Mathijssen, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Commission Decision SG-Greffe(2008) D/204448 of 10 July 2008;

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

In the present case, the applicant seeks the annulment of Commission Decision SG-Greffe(2008) D/204448 of 10 July 2008 by which the Commission rejected, for lack of Community interest, the applicant's complaint regarding the alleged violations of Article 81 and 82 EC in connection with the watch manufacturers' refusal to supply spare parts to independent watch repairers [Case C(2008) 3600].

In support of its claims the applicant argues that the Commission infringed the Treaty by deforming the applicant's complaint and thus, using materially incorrect facts in its decision.

Furthermore, the applicant submits that the Commission committed errors in law and infringed Articles 81 and 82 EC by deciding that the watch manufacturers complained of didn't held a dominant position and that their refusal to sell spare parts outside the selective distribution system didn't constitute an abuse of their dominant position. The applicant also contests the Commission's conclusions that there were agreements or concerted practices between watch manufacturers.

The applicant contends that the Commission misused its power by using the argument of lack of Community interest after a four-year investigation of the applicant's complaint.

Moreover, the applicant claims that the Commission failed to state reasons thereby infringing Article 253 EC.

Finally, in the applicant's opinion, the Commission infringed the principle of impartiality in investigating its complaint.

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**Action brought on 30 September 2008 — STEF v Commission**

(Case T-428/08)

(2008/C 313/81)

*Language of the case:* English

**Parties**

*Applicant:* Samband tónskálda og eigenda flutningsréttar (STEF) (Reykjavík, Island) (represented by: H. Melkorka Óttarsdóttir, lawyer)

*Defendant:* Commission of the European Communities

**Form of order sought**

— Annul Article 3 of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 EC and Article 53 EEA (Case COMP/C2/38.698 — CISAC); and

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 3435 final of 16 July 2008 (Case COMP/C2/38.698 — CISAC) relating to a proceeding under Article 81 EC and Article 53 EEA. Precisely, the applicant contests the Commission findings in Article 3 of the contested decision stating that territorial delineations of the reciprocal representation mandates granted by one authors' society to another constitute a concerted practice in violation of Article 81 EC and Article 53 EEA.

The applicant puts forward four pleas in law in support of its claims.

First, the applicant submits that the Commission committed an error of assessment and infringed Article 81 EC by deciding that the parallel territorial delineation included in the reciprocal representation agreements concluded by the applicant and the other CISAC members is the result of a concerted practice. It claims that the level of evidence put forward by the Commission in the decision is insufficient to establish that the parallel conduct is not the result of normal competitive conditions but constitutes such a concerted practice. The applicant further states that the presence of the delineation clause in all of its reciprocal agreements is necessary to protect effectively and sufficiently the interest of the authors represented by the applicant and the other CISAC members.

Secondly, the applicant contends that, contrary to the findings of the contested decision, the territorial delineation by CISAC societies in their reciprocal representation agreements is not restrictive of competition within the meaning of Article 81(1) EC because to create and protect the competition between the authors' societies would be inconsistent with the fundamental nature of the collecting society which is to protect the rights of its members and operate exclusively for its members.

Thirdly, in the alternative, the applicant argues that, even if the territorial delineation constituted a concerted practice within the meaning of Article 81(1) EC, the conditions of Article 81(3) EC are fulfilled. It states that the challenged practice improves the distribution of music, allows consumers fair share of the resulting benefits, does not impose restrictions on undertakings which are not indispensable to the attainment of the objective nor afford them the possibility of eliminating competition in respect of a substantial part of the products. This practice should be then considered to be necessary and proportionate, in the meaning of Article 81(3) EC to the legitimate objective of protecting the rights of the societies' members and the authors.

Finally, the applicant claims that the Commission failed to apply Article 151(4) EC in its decision which states that the Community shall take into account cultural aspects in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures.

**Action brought on 30 September 2008 — Grain Millers v OHIM — Grain Millers (GRAIN MILLERS)**

(Case T-429/08)

(2008/C 313/82)

*Language in which the application was lodged: English***Parties**

*Applicant:* Grain Millers, Inc. (Eden Prairie, United States) (represented by: L.-E. Ström, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Grain Millers GmbH & Co. KG (Bremen, Germany)

**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 23 July 2008 in case R 1192/2007-2; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'GRAIN MILLERS' for goods in classes 29, 30 and 31 — application No 363 8657

*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:* German 'business designation' 'GRAIN MILLERS' and its figurative version

*Decision of the Opposition Division:* Rejected the opposition in its entirety

*Decision of the Board of Appeal:* Partial dismissal of the appeal

*Pleas in law:* Infringement of Article 8(4) of Council Regulation No 40/94 as the Board of Appeal has overestimated the value of the evidence submitted by the other party to the proceedings before the Board of Appeal in order to substantiate prior rights over the earlier trade mark.