

Action brought on 12 December 2012 — Wedi v OHIM — Mehlhose Bauelemente für Dachrand + Fassade (BALCO)

(Case T-541/12)

(2013/C 46/37)

*Language in which the application was lodged: German***Parties***Applicant:* Wedi GmbH (Emsdetten, Germany) (represented by: O. Bischof, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Mehlhose Bauelemente für Dachrand + Fassade GmbH & Co. KG (Herford, Germany)**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 September 2012 in Case R 2255/2011-4;
- Alternatively, suspend the proceedings in Case R 2255/2011-4 until a final decision has been made on the applicant's application of 15 November 2012 for a declaration of invalidity of the other party's Community trade mark No 006095889 Balkogrün; reference No 000007267 C of the Office for Harmonisation in the Internal Market (Trade Marks and Designs);
- Order the defendant to pay the costs.

Pleas in law and main arguments*Applicant for a Community trade mark:* the applicant*Community trade mark concerned:* the word mark 'BALCO' for goods in Class 19 — Community trade mark application No 9 023 771*Proprietor of the mark or sign cited in the opposition proceedings:* Mehlhose Bauelemente für Dachrand + Fassade GmbH & Co. KG*Mark or sign cited in opposition:* the word marks 'Balkogrün', 'Balkoplan' and 'Balkotop' for goods in Classes 19, 21 and 27*Decision of the Opposition Division:* the opposition was upheld*Decision of the Board of Appeal:* the appeal was dismissed*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009**Action brought on 18 December 2012 — Teva Pharma and Teva Pharmaceuticals Europe v EMA**

(Case T-547/12)

(2013/C 46/38)

*Language of the case: English***Parties***Applicants:* Teva Pharma BV (Utrecht, Netherlands); and Teva Pharmaceuticals Europe BV (Utrecht) (represented by: K. Bacon and D. Piccinin, Barristers, G. Morgan and C. Drew, Solicitors)*Defendant:* European Medicines Agency**Form of order sought**

The applicants claim that the Court should:

- Annul the decision of the European Medicines Agency, contained in its letter of 26 November 2012, refusing to validate the applicants' application for a marketing authorisation for its generic version of abacavir/lamivudine; and
- Order the European Medicines Agency to pay the applicants' costs.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law, alleging that the refusal to validate their application for the authorisation of a generic version of a fixed dose combination medicinal product, on the basis that the product was protected by a ten year period of exclusivity is contrary to Regulation (EC) No 726/2004⁽¹⁾ and Directive No 2001/83/EC⁽²⁾ properly interpreted. In particular, the applicants contend that the marketing authorisation holder for the product is not entitled to enjoy a ten year period of data exclusivity, as the product is a fixed dose combination combining two active substances which have been supplied and used within the EU as components of a number of different medicinal products for some years. The applicants therefore contend that the product falls within

the same global marketing authorisation as the earlier marketing authorisations for its component parts within the meaning of the second sub-paragraph of Article 6(1) of Directive No 2001/83. Accordingly, the applicants state that it did not enjoy any further period of data exclusivity after the expiry of the data exclusivity relating to these authorisations.

(¹) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Text with EEA relevance)

(²) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use

Action brought on 21 December 2012 — North Drilling v Council

(Case T-552/12)

(2013/C 46/39)

Language of the case: Spanish

Parties

Applicant: North Drilling Co. (Teheran, Iran) (represented by: J. Viñals Camallonga, L. Barriola Urruticoechea and J. Iriarte Ángel, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 2 of Council Decision 2012/635/CFSP of 15 October 2012, amending Decision 2010/413/CFSP concerning restrictive measures against Iran, in so far as it concerns it and remove its name from the annex thereto;

— annul Article 1 of Council Implementing Regulation (EU) No 945/2012 of 15 October 2012, implementing Regulation (EU) 267/2012 concerning restrictive measures against Iran, in so far as it concerns it and remove its name from the annex thereto, and

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error

— The first plea alleges a manifest error of assessment of the facts on which the contested provisions are based, as they lack any real factual and evidential basis.

2. Second plea in law, alleging breach of the duty to state reasons

— The second plea alleges a breach of the duty to state reasons, as the contested provisions are vitiated in relation to NDC by a statement of reasons which is inadequate, general and stereotypical.

3. Third plea in law, alleging disregard for the right to judicial protection

— The third plea alleges infringement of the right to effective judicial protection with regard to the statement of reasons for the measures, the lack of evidence in relation to the reasons stated and the rights of the defence and the right to property, given that the requirement to state reasons has not been fulfilled, which has an impact on the other rights.

4. Fourth plea in law, alleging infringement of the right to property

— The fourth plea is based on infringement of the right to property, since that right was restricted without valid justification.

5. Fifth plea in law, alleging infringement of the principle of equal treatment

— The fifth plea is based on infringement of the principle of equal treatment, since the relative position of the applicant has been prejudiced without reason.

6. Sixth plea in law, alleging misuse of powers

— The sixth plea in law is based on misuse of powers, since there is objective, precise and consistent evidence which supports the argument that the sanction was adopted for purposes other than those put forward by the Council.

Action brought on 24 December 2012 — Changshu City Standard Parts Factory v Council

(Case T-558/12)

(2013/C 46/40)

Language of the case: English

Parties

Applicant: Changshu City Standard Parts Factory (Changshu City, China) (represented by: R. Antonini and E. Monard, lawyers)