

*Pleas in law:*

- Infringement of Article 60 of Regulation No 207/2009, and Rules 48 and 49 of Regulation No 2868/95
- Infringement of Article 8(1)(b) of Regulation No 207/2009

- there is no consumer or worker exposure to HHPA;
- the assessment of HHPA is based on data which is old and outdated; and
- the assessment did not take into account all relevant data.

**Action brought on 28 February 2013 — Polynt and Sitre v ECHA**

(Case T-134/13)

(2013/C 129/50)

*Language of the case: English*

**Parties**

*Applicants:* Polynt SpA (Scanzorosciate, Italy); and Sitre Srl (Milan, Italy) (represented by: C. Mereu and K. Van Maldegem, lawyers)

*Defendant:* European Chemicals Agency (ECHA)

**Form of order sought**

The applicants claim that the Court should:

- Declare the application admissible and well-founded;
- Partially annul Decision ED/169/2012 of the ECHA concerning the inclusion of cyclohexane-1,2-dicarboxylic anhydride, cis-cyclohexane-1,2-dicarboxylic anhydride and trans-cyclohexane-1,2-dicarboxylic anhydride (collectively referred to as 'HHPA') as Substances meeting the criteria set out in Article 57(f) of Regulation (EC) No 1907/2006 <sup>(1)</sup> ('REACH'), in accordance with Article 59 of REACH, as it relates to HHPA and its monomers; and
- Order the defendant to pay the costs of these proceedings.

**Pleas in law and main arguments**

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging manifest error of assessment/law: (i) respiratory sensitizers are not covered by Article 57(f) of REACH and (ii) the ECHA did not provide sufficient justification and evidence in order to demonstrate that HHPA was of 'equivalent concern' to a carcinogen, mutagen or toxicant for reproduction ('CMR'), category 1, since:
  - CMR substances trigger irreversible effects whereas, in the case of HHPA, the effects of respiratory sensitisation are not irreversible;

2. Second plea in law, alleging breach of the rights of defence, as the applicants did not have the opportunity to fully defend their case because of the lack of objective criteria for considering whether a substance is of equivalent concern according to Article 57(f) REACH, especially in the case of a respiratory sensitizer such as HHPA, and because ECHA did not take into account all information available or provided by the industry during the commenting period.
3. Third plea in law, alleging infringement of the principle of proportionality, as the ECHA had a choice of measures with respect to HHPA and by identifying HHPA as Substance of Very High Concern ('SVHC') caused the applicants disadvantages which are disproportionate in relation to the aims pursued.

<sup>(1)</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

**Action brought on 28 February 2013 — Hitachi Chemical Europe and Others v ECHA**

(Case T-135/13)

(2013/C 129/51)

*Language of the case: English*

**Parties**

*Applicants:* Hitachi Chemical Europe GmbH (Düsseldorf, Germany); Polynt SpA (Scanzorosciate, Italy); and Sitre Srl (Milan, Italy) (represented by: K. Van Maldegem and C. Mereu, lawyers)

*Defendant:* European Chemicals Agency (ECHA)

**Form of order sought**

The applicants claim that the Court should:

- Declare the application admissible and well-founded;
- Partially annul Decision ED/169/2012 of the ECHA concerning the inclusion of Hexahydromethylphthalic anhydride, Hexahydro-4-methylphthalic anhydride, Hexahydro-1-methylphthalic anhydride and Hexahydro-3-methylphthalic anhydride (collectively referred to as 'MHHPA') as Substances meeting the criteria set out in Article 57(f) of Regulation (EC) No 1907/2006 <sup>(1)</sup> ('REACH'), in accordance with Article 59 of REACH, as it relates to MHHPA and its monomers; and
- Order the defendant to pay the costs of these proceedings.

**Pleas in law and main arguments**

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging manifest error of assessment/law: (i) respiratory sensitisers are not covered by Article 57(f) of REACH and (ii) the ECHA did not provide sufficient justification and evidence in order to demonstrate that MHHPA was of 'equivalent concern' to a carcinogen, mutagen or toxicant for reproduction ('CMR'), category 1, since:
  - CMR substances trigger irreversible effects whereas, in the case of MHHPA, the effects of respiratory sensitisation are not irreversible;
  - there is no consumer or worker exposure to MHHPA;
  - the assessment of MHHPA is based on data which is old and outdated;
  - the assessment did not take into account all relevant data; and
  - the assessment is mainly based on read across with another substance which is scientifically questionable and which demonstrates the poor and limited data used for the assessment of MHHPA.
2. Second plea in law, alleging breach of the rights of defence, as the applicants did not have the opportunity to fully defend their case because of the lack of objective criteria for considering whether a substance is of equivalent concern according to Article 57(f) REACH, especially in the case of a respiratory sensitiser such as MHHPA, and because ECHA did not take into account all information available or provided by the industry during the commenting period.

3. Third plea in law, alleging infringement of the principle of proportionality, as the ECHA had a choice of measures with respect to MHHPA and by identifying MHHPA as Substance of Very High Concern ('SVHC') caused the applicants disadvantages which are disproportionate in relation to the aims pursued.

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<sup>(1)</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

**Action brought on 7 March 2013 — Saferoad RRS v OHIM (MEGARAIL)**

(Case T-137/13)

(2013/C 129/52)

*Language of the case: German*

**Parties**

*Applicant:* Saferoad RRS GmbH (Weroth, Germany) (represented by C. Czychowski, lawyer)

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

**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 9 January 2013 in Case R 2536/2011-4 and the Examiner's decision of 23 November 2011 in so far as the mark was rejected;
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* the word mark 'MEGARAIL' for goods and services in Classes 6, 19 and 37

*Decision of the Examiner:* the application was rejected

*Decision of the Board of Appeal:* the appeal was dismissed