JUDGMENT OF THE COURT

(Second Chamber)

of 16 September 2004

in Case C-329/02 P: SAT.1 SatellitenFernsehen GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) [1]

(Appeals — Community trade mark — Absolute grounds for refusal to register — Article 7(1)(b) and (c) of Regulation (EC) No 40/94 — 'Sat.2')

(2004/C 273/04)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-329/02 P: appeal under Article 56 of the Statute of the Court of Justice, lodged at the Court on 12 September 2002, SAT.1 SatellitenFernsehen GmbH, established in Mayence (Germany) (avocat: R. Schneider) the other party to the proceedings being: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: D. Schennen) — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet (Rapporteur), R. Schintgen, F. Macken and N. Colneric, Judges; F.G. Jacobs, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on16 September 2004, in which it has ruled:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 2 July 2002 in Case T-323/00 SAT.1 v OHIM (SAT.2) [2002] ECR II-2839 inasmuch as the Court of First Instance found that the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) had not infringed Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark by refusing, by its decision of 2 August 2000 (Case R 312/1999-2), to register as a Community trade mark the term 'SAT.2' in respect of services which, in the registration application, are connected with satellite broadcasting, that is to say the services referred to in paragraph 3 of the contested judgment to which the Court of First Instance does not refer in paragraph 42 of the contested judgment;*

2. *Annuls the decision of 2 August 2000 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs);*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs incurred in these proceedings and in those before the Court of First Instance.*

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[1] OJ C 289 of 23.11.2002.

JUDGMENT OF THE COURT

(Third Chamber)

of 16 September 2004

in Case C-366/02 (reference for a preliminary ruling from the Verwaltungsgericht Halle): Gerd Gschoßmann v Amt für Landwirtschaft und Flurneuordnung Süd [1]

(Common agricultural policy — Regulation (EEC) No 1765/92 and (EC) No 1251/1999 — Support system for producers of arable crops — Compensatory payments for areas down to arable crops and subject to set-aside — Exclusion for land under permanent crops — Definition)

(2004/C 273/05)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-366/02: reference for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Halle (Germany), made by decision of 30 September 2002, received at the Court on 14 October 2002, in the proceedings between Gerd Gschoßmann and Amt für Landwirtschaft und Flurneuordnung Süd — the Court (Third Chamber), composed of: A. Rosas, acting for the President of the Third Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 16 September 2004, in which it has ruled:

1. *Article 9 of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops and Article 7 of Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops must be interpreted as meaning that, for land under permanent crops to be excluded from compensatory payments, there is no requirement that the land has been cultivated, and in particular that insecticides have been used or crops harvested.*

2. *Article 9 of Regulation No 1765/92 and Article 7 of Regulation No 1251/1999 must be interpreted as meaning that the land ceases to be under permanent crops, in the case of apple production, once the apple trees have been felled, even if they have not been removed. However, the mere decision to fell the trees, without that decision being put into practice, does not mean that the land ceases to be under permanent crops.*

3. *Article 9 of Regulation No 1765/92 and Article 7 of Regulation No 1251/1999 must be interpreted as meaning that land which has ceased to be under permanent crops must be regarded as being used for non-agricultural purposes if is shown that it is not intended for the production of other plants or animals.*

(1) OJ C 305 of 7.12.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 16 September 2004

in Case C-382/02 (reference for a preliminary ruling from the Vestre Landsret): Cimber Air A/S v Skatteministeriet (1)

(Sixth VAT Directive — Article 15(6), (7) and (9) — Exemption of exports outside the Community — Meaning of 'aircraft used by airlines operating chiefly on international routes' — Exemption for fuelling and provisioning of domestic flights)

(2004/C 273/06)

(Language of the case: Danish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-382/02: reference for a preliminary ruling under Article 234 EC, from the Vestre Landsret (Denmark), made by decision of 9 October 2002, received at the Court on 23 October 2002, in the proceedings between Cimber Air A/S and Skatteministeriet — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, C. Gulmann, J.-P. Puissochet (Rapporteur), J.N. Cunha Rodrigues and N. Colneric, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on16 September 2004, in which it has ruled:

1. *Article 15(6), (7) and (9) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment must be interpreted as meaning that the supplies of goods and services referred to in those provisions to aircraft which operate on domestic routes but are used by airlines chiefly operating for reward on international routes are exempt from VAT.*

2. *It is for the national courts to assess the extent of the international business and the extent of the non-international business of such companies. In doing so, they may take account of all information which indicates the relative importance of the type of operations concerned, in particular turnover.*

(1) OJ C 7 of 11.1.2003.

JUDGMENT OF THE COURT

(Second Chamber)

of 14 September 2004

in Case C-385/02: Commission of the European Communities v Italian Republic (1)

(Failure of a Member State to fulfil its obligations — Directive 93/37/EEC — Public works contracts — Negotiated procedure without prior publication of a contract notice)

(2004/C 273/07)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-385/02: Commission of the European Communities (Agents: K. Wiedner and R. Amorosi) v Italian Republic (Agent: M. Fiorilli) — action under Article 226 EC for failure to fulfil obligations, brought before the Court on 28 October 2002, — the Court (Second Chamber), composed of: C.W.A. Timmermans, President of the Chamber, J.-P. Puissochet, J.N. Cunha Rodrigues (Rapporteur), R. Schintgen and N. Colneric, Judges; J. Kokott, Advocate General; M. Múgica Arzamendi, Principal Administrator, for the Registrar, has given a judgment on 14 September 2004, in which it:

1. *Declares that, as the Magistrato per il Po di Parma, a local agency of the Ministry of Public Works (now the Ministry for Infrastructure and Transport) awarded contracts for the completion of the construction of an overflow basin to retain flood waters of the Parma watercourse in the Marano area (in the Parma commune) as well as for works relating to the development and completion of an overflow basin for the Enza watercourse and to the retention of flood waters of the Terdoppio watercourse south-west of Cerano by the negotiated procedure without prior publication of a contract notice, when the conditions necessary in that regard were not satisfied, the Italian Republic has failed to fulfil its obligations under Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts;*