

A. The Court of First Instance erred in law in paragraphs 169 to 180 of the Judgment by incorrectly interpreting Article 87(3)(c) EC ⁽¹⁾ and by incorrectly interpreting and applying the Community Guidelines on state aid in the agricultural sector. In this regard, the Judgment is moreover vitiated by an inconsistent and inadequate reasoning; and

B. The Court of First Instance committed a procedural error in paragraph 168 of the Judgment by misreading and misrepresenting one of the arguments submitted by the Appellant, which adversely affected the interests of the Appellant.

⁽¹⁾ OJ C 321 E, p. 76

Action brought on 25 November 2009 — Commission of the European Communities v Hellenic Republic

(Case C-478/09)

(2010/C 24/68)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: S. La Pergola and M. Karanasou Apostopoulou, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

— Declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2007/63/EC ⁽¹⁾ of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2007/63/EC into domestic law expired on 31 September 2008.

⁽¹⁾ OJ L 300, 17.11.2007, p. 47

Appeal brought on 26 November 2009 by Evets Corp. against the judgment of the Court of First Instance (First Chamber) delivered on 23 September 2009 in Joined Cases T-20/08 and T-21/08: Evets Corp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-479/09 P)

(2010/C 24/69)

Language of the case: English

Parties

Appellant: Evets Corp. (represented by: S. Ryan, Solicitor)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court should:

— Annul the decision of the Court of First Instance;

— Declare that the application for *restitutio in integrum* was brought within the time-limits prescribed by Article 78(2) of Regulation N. 40/94 ⁽¹⁾;

— Refer the matters back to the CFI so that that Court may in turn refer the case to the Board of Appeal for it to rule on the substantive issue as to whether all due care was taken to renew the trade marks in question;

— Order OHIM to pay the costs before the Court of Justice and the Court of First Instance.

Pleas in law and main arguments

1. This appeal concerns an application for *restitutio in integrum* under Article 78(2) of Council regulation (EC) No 40/94 (the Community Trade Mark Regulation). The trade mark in issue had lapsed by reason of non-payment of renewal fees.

2. The trade mark proprietor had delegated responsibility for the payment of renewal fees to a third party. However as a consequence of an unintended error, the renewal payment was not made by the due date.

3. OHIM issued notifications of cancellation to the legally qualified representative of the trade mark proprietor, who was not the third party responsible for the payment of renewal fees. The representative forwarded these to the trade mark proprietor who received them several days later.

4. Subsequently the trade mark proprietor filed an application for *restitutio in integrum* pursuant to Article 78(2). This application was filed less than two months after the proprietor itself received the notifications of cancellation, but more than two months after the legally qualified representative had received them.
5. Article 78(2) requires that the application must be filed in writing within two months from the removal of the cause of non-compliance with the time limit. The issue that arises on this appeal concerns how the date from which time begins to run should be identified.
6. The proprietor contends that the relevant date is the date on which it received the notification. It had assumed responsibility itself, through a third party, to pay renewal fees. It only discovered the error, and had the opportunity to remove the cause of non-compliance, when it actually received such notification.
7. However the Court of First Instance upheld the contention of OHIM that the relevant date was the date of the receipt by the proprietor's legally qualified representative, to which OHIM had sent the notification. OHIM relied upon the provisions of rule 77 which provides that 'Any notification or other communication addressed by the Office to the duly authorized representative shall have the same effect as if it had been addressed to the represented person.'
8. The proprietor contends on this appeal that:
- (i) The purpose of the deeming provisions in rule 77 is to provide that OHIM has discharged its obligations to notify a party when it sends a notification to a party's representative in relation to matters for which that representative has authority to act. OHIM is not then obliged to do anything further. But this is not a relevant consideration in the present case.
 - (ii) The 'cause of non-compliance' with the time limit is removed, in the case of time limits for payment of renewal fees, when the trade mark proprietor itself, and/or the person specifically delegated by it as responsible for payment, actually becomes aware of the unintended failure to pay. Any other conclusion would render the relevant provision unworkable: in particular a professional representative will always know of and be expected to be aware of the relevant time limits so that the sending of a notification by OHIM to him/her would ordinarily be irrelevant anyway.
 - (iii) Payment of renewal fees is a simple financial transaction that does not require legal representation. So a party can pay the fees itself or delegate any other person to do so. Where the 'representative' of a party — who acted for the party in proceedings before the Office — is not also under a separate responsibility to pay renewal fees, then notification of non-payment to that representative is not relevant; it is not notice to the party and it cannot be so deemed. That representative is not legally responsible for acting on such notification (though may transmit it to his client as a matter of professional courtesy).
 - (iv) On facts such as the present facts, a representative for other purposes is not a 'duly authorized representative' for the purpose of payment of renewal fees. Notice to him/her therefore does not satisfy rule 77 and does not bring the 'deeming' provision into play.
 - (v) In summary, the relevant person to be considered is the one with responsibility for taking the act in question. Only when that person becomes aware of the non-compliance can the relevant time period for an application begin to run.
 - (vi) While the provisions of the EPC are not strictly binding in community law, they must clearly be highly persuasive. Where there is EPO case law on the same wording, it is highly desirable that it be construed in the same way. If interpreted differently, then one or the other interpretation must be wrong. The appellant submits that the parallel decisions in the EPO are correct and that their reasoning is correct.
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- (¹) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark
OJ L 11, p. 1
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- Appeal brought on 26 November 2009 by AceaElectrobal
Produzione SpA against the judgment delivered by the
Court of First Instance (First Chamber) on 8 September
2009 in Case T-303/05 AceaElectrobal Produzione SpA
v Commission of the European Communities**
- (Case C-480/09 P)**
- (2010/C 24/70)
- Language of the case: Italian*
- Parties**
- Appellant:* AceaElectrobal Produzione SpA (represented by: L. Radicati di Brozolo, M. Merola, T. Ubaldi and E. Marasà, lawyers)
- Other party to the proceedings:* Commission of the European Communities