

Pleas in law and main arguments

The contested decision introduces an obligation on the manufacturers of compound feedingstuffs for production animals to provide an indication of the precise quantities of all the raw material used in their products in order to protect public health by improving the traceability of the ingredients. According to the applicant, the effect of that measure is to oblige disclosure of basic know-how and business secrets of manufacturers of compound feedingstuffs.

In support of its application, the applicant claims breach of several rights guaranteed by Community law and of objectives pursued by the Treaty. Furthermore, the contested directive runs counter to the safeguarding of undistorted competition and the encouragement of technical research and development. Moreover, it disregards property rights and the right freely to pursue an economic activity. The applicant claims, finally, that the directive runs counter to the objective of improving agricultural products and protecting the environment.

The applicant maintains, moreover, that the contested measure is disproportionate. According to the applicant, the directive is not capable of attaining the objective of protecting public health and in any event goes beyond what is necessary to achieve such an objective. The applicant further claims that the directive does not of itself ensure the quality of the products nor improves the traceability of the ingredients and that it places a disproportionate burden with regard to labelling.

Finally, the applicant claims that the measure is based on an erroneous legal basis. In its view, Article 37 of the EC Treaty should be chosen as the legal basis instead of Article 152 of the Treaty in view of the fact that the contested directive bears no relationship to veterinary or plant health matters.

Action brought on 30 May 2002 by Cervecería Modelo, S.A. de C.V. against Office for the Harmonization of the Internal Market (trade marks and designs) (OHIM)

(Case T-169/02)

(2002/C 180/57)

(Language of the case: Spanish)

An action against Office for Harmonization in the Internal Market (trade marks and designs) (OHIM) was brought before the Court of First Instance of the European Communities on 30 May 2002 by Cervecería Modelo, S.A. de C.V., whose registered office is in Mexico, D.F., represented by Carlos Lamo Devesa and Antonio Velázquez Ibáñez.

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of the OHIM of 6 March 2002;
- order the defendant to pay the costs.

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Applicant for the Community trade mark:

The applicant

The Community trade mark concerned:

Community figurative trade mark No 1.178.425, which depicts a bottle of beer bearing the words 'NEGRA MODELO' on the label, for products falling within Classes 25 (clothing), 32 (beer) and 42 (services related to bars, restaurants and nightclubs)

Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:

MODELO CONTINENTE HIPERMERCADOS S.A.

Trade mark or sign asserted by way of opposition in the opposition proceedings:

Portuguese figurative marks No 295.800 and 295.804, which distinguish goods in Classes 25 (clothing, including footwear) and 33 (syrups, beer and non-alcoholic beverages) of the international classification respectively

Decision of the Opposition Division:

Provisional refusal to register the Community trade mark in issue to distinguish 'beer' and registration in respect of 'clothing' and 'services related to bars, restaurants and nightclubs'

Decision of the Board of Appeal:

Decision of the Opposition Division upheld

Grounds of claim:

Infringement of Article 8(1)(a) of Regulation (EC) No 40/94 (likelihood of confusion)