

Judgment of the Court (First Chamber) of 23 March 2006 — Mühlhens GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Zirh International Corp.

(Case C-206/04 P) ⁽¹⁾

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Word mark ZIRH — Opposition by the proprietor of the Community trade mark SIR)

(2006/C 131/22)

Language of the case: English

Parties

Appellant: Mühlhens GmbH & Co. KG (represented by: T. Schulte-Beckhausen and C. Musiol, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen and A. von Mühlendahl, Agents)

Intervener: Zirh International Corp., (represented by L. Kouker)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 3 March 2004 in Case T-355/02 Mühlhens v OHIM, by which it dismissed an action for annulment of the rejection of the opposition by the proprietor of an earlier mark to the registration of a trade mark — Similarity of the marks — Art. 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders Mühlhens GmbH & Co. KG to pay the costs.

⁽¹⁾ OJ C 179, 10.07.2004.

Judgment of the Court (Second Chamber) of 23 March 2006 — Commission of the European Communities v Republic of Austria

(Case C-209/04) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Corncrake — Special protection area in the Lauteracher Ried national nature reserve — Exclusion of the Soren and Gleggen-Köblern sites — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Procedure for a construction plan or project — Procedure for determining the road line of a dual carriageway — Procedure for environmental impact study — Procedural breaches relating to the project for the construction of the federal S 18 dual carriageway in Austria — Temporal application of Directive 92/43)

(2006/C 131/23)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and B. Schima, agents)

Defendant: Republic of Austria (represented by: E. Riedl, J. Müller and K. Humer, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and Article 6(4) in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Drawing of the boundaries of the special protection area 'Lauteracher Ried' on the basis of inaccurate scientific criteria, wrongly excluding the two sites 'Soren' and 'Gleggen-Köblern', which are important for the protection of the corncrake (*Crex crex*) and other migratory birds nesting in the meadows — Authorisation of a road-construction project likely to affect that area, without complying with the obligations under Article 6(4) of Directive 92/43/EEC.

Operative part of the judgment

1. Declares that, by failing to include in the special protection area at the Lauteracher Ried national nature reserve the Soren and Gleggen-Köblern sites which, according to scientific criteria, are, together with that special protection area, among the most suitable territories in number and size for the purposes of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997, the Republic of Austria has failed to fulfil its obligations under those provisions of that directive;