

Pleas in law and main arguments

Applicant for a Community trade mark: RENTRAK Corp.

Community trade mark concerned: Word mark PPT (Services for the distribution of video-cassettes on the basis of shared revenue or payment for use; rental of videos and DVDs; rental of video-recorders and DVD players; distribution of videotapes; on-line rental of videos, DVDs, video-recorders and DVD players by means of the world wide information net, Class 41)

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Portuguese national trade mark No 330 375, presenting the verbal element 'PPTV' (services relating to 'Education; providing of training; entertainment; sporting and cultural activities' within Class 41).

Decision of the Opposition Division: Upholding of the opposition and rejection of the application for registration of a Community trade mark

Decision of the Board of Appeal: Annulment of the Opposition Division's decision and rejection of the opposition

Pleas in law:

Similarity of services: the Board of Appeal's interpretation to the effect that the services relating to the trade mark at issue, being distribution services only, are not directed at the same consumers, so that they have no connection whatsoever with the services provided by the applicant, is too restrictive.

Graphic similarity and likelihood of confusion: The three first letters of each of the two distinctive signs are exactly the same. Neither of the trade marks has any immediate meaning for Portuguese consumers, so that they will be taken to be fanciful signs and therefore to be original.

The likelihood of confusion includes the risk of association.

Even if Portuguese consumers did succeed in distinguishing the marks, it is not inconceivable that they would ascribe to them the same origin or believe that there were commercial, economic or organisational relations between the proprietor undertakings, which might constitute unfair competition even if that were not the intention of the applicant for registration of the trade mark at issue.

Action brought on 24 April 2007 — Mohr & Sohn v Commission

(Case T-131/07)

(2007/C 155/50)

Language of the case: German

Parties

Applicant: Paul Mohr & Sohn, Baggerei und Schifffahrt (Niederwalluf (Rhg), Germany) (represented by: F. von Waldstein, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the defendant's decision of 28 February 2007 and order the European Commission to grant the applicant an exemption for the crane vessel 'Niclas', in accordance with Article 4(6) of Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport;
- Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

The applicant challenges the decision of the Directorate-General for Energy and Transport of the Commission (2007) D/200972 of 28 February 2007 in respect of the application which it made pursuant to Article 4(6) of Regulation (EC) No 718/1999⁽¹⁾ for an exemption for the crane vessel 'Niclas'. The applicant applied for that specialised vessel to be exempted from the application of the 'old-for-new' rule. In the contested decision the defendant decided not to grant the relevant exemption for the vessel 'Niclas'.

In support of its action the applicant claims, in particular, that the crane vessel 'Niclas' is not a vessel which is subject to Regulation No 718/1999. It submits, in that regard, that the ship concerned is not in possession of a certificate of entitlement to operate on the Rhine, which is however a requirement for the legal transportation of goods on the European waterways. According to the applicant, the crane vessel 'Niclas' is no different from storage vessels under Article 2(2)(f) of Regulation No 718/1999 or from hopper vessels and floating construction plants within the meaning of Article 2(2)(g) of that regulation.

⁽¹⁾ Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport.

Action brought on 2 May 2007 — Portela — Comércio de artigos ortopédicos e hospitalares v Commission

(Case T-137/07)

(2007/C 155/51)

Language of the case: Portuguese

Parties

Applicant: Portela — Comércio de artigos ortopédicos e hospitalares, Lda. (Queluz, Portugal) (represented by: C. Mourato, lawyer)

Defendant: the Commission of the European Communities