

Form of order sought

— Annul the Commission decision of 20 July 2007;

(Case T-365/07)

— Rule that the applicant is entitled to exemption from post-clearance recovery of anti-dumping duties pursuant to Article 220(2)(b) of the Community Customs Code ⁽¹⁾ and to Article 871 *et seq.* of Regulation No 2454/93 ⁽²⁾.

(2007/C 283/61)

Language in which the application was lodged: English

Pleas in law and main arguments

By the present action, the applicant seeks annulment of the decision which it claims is contained in a Commission letter of 20 July 2007 stating that the Commission lacks the competence to rule on the applicant's request to the French authorities that it be exempted from post-clearance recovery of duties on the importation of colour television receivers manufactured in Thailand. The applicant's request was forwarded to the Commission by the French authorities as an annex to the application based on Article 239 of the Community Customs Code concerning the remission of import duties ⁽³⁾.

The applicant claims that the Commission was also under an obligation to rule on the application based on Article 220(2)(b) of the Community Customs Code and, by way of a separate letter, requested it to take a decision. In the present action, the applicant contests a decision which it claims is contained in the Commission letter addressed to it in response to its own letter.

The applicant claims that the Commission erred in law by finding that the French authorities had referred the case to it exclusively on the basis of Article 239 of the Community Customs Code, given that, according to the applicant, the documents received by the Commission met the requirements of Article 871 *et seq.* of Regulation No 2454/93. The applicant takes the view that the Commission is under an obligation to examine whether the conditions for application of Article 220(2)(b) of the Community Customs Code were met in this case, particularly in view of the fact that it had decided to reject its request for remission based on Article 239 of the Code.

⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

⁽²⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

⁽³⁾ Decision of the Commission of 7 May 2007 ruling on that application and indicating to the French authorities that it was not justified in the applicant's case to accord remission of the duties on importation which were the subject of an action for annulment before the Court of First Instance in Case T-225/07 *Thomson Sales Europe v Commission* (notice published in OJ C 211, 8.9.2007, p. 36).

Action brought on 17 September 2007 — Traxdata France v OHIM — Ritrax (TRAXDATA, TEAM TRAXDATA)**Parties**

Applicant: Traxdata France SARL (Paris, France) (represented by: F. Valentin, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Ritrax Corp. Ltd (London, United Kingdom)

Form of order sought

— Reverse the decision of 23 May 2007 handed down by the First Board of Appeal of the Office for Harmonisation in the Internal Market in joined cases R 1337/2005-1, R 1338/2005-1, R 1339/2005-1 and R 1340/2005-1 and to accordingly declare the invalidity of TRAXDATA CTMs No 000007393, No 000877779, No 001252725 and TEAM TRAXDATA No 000877910 for all of the products and services listed in classes 9, 16 and 42, on the basis of Article 52(1)(c) of the CTMR of 20 December 1993;

— pronounce the invalidity of TEAM TRAXDATA CTM No 000877910, for the following services listed in class 36: 'financial sponsorship of sports and leisure activities; financial sponsorship of sporting competitions, events and teams; financial sponsorship of sportsmen and sportswomen [...] advice and consultancy services in relation to all the aforesaid services';

— pronounce the invalidity of TRAXDATA CTMs No 000877779 and TEAM TRAXDATA No 000877910, for the following services listed in class 41: 'entertainment and education services; arranging and conducting of conferences, congresses, seminars, symposiums, [...] electronic game services provided by means of the Internet; publishing of books, magazines and periodicals; [...] amusement centre services; [...] rental of video cassettes, audio cassettes, compact discs and cine films; advice and consultancy services relating to all the aforesaid services.'

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word and figurative marks 'TRAXDATA' and 'TEAM TRAXDATA' for goods and services in classes 9, 16, 36, 41 and 42 — Community trade marks No 877 910, 877 779, 7 393 and 1 252 725

Proprietor of the Community trade mark: Ritrax Corp. Ltd

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The unregistered corporate name 'TRAXDATA FRANCE SARL' and trade name 'TRAXDATA' for the following goods and services: 'consultancy, delivery and sale of computer consumables, hardware and accessories'

Decision of the Cancellation Division: Rejection of the applicant's requests for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The Board of Appeal infringed Article 52(1)(c) read in conjunction with Article 8(4) of Council Regulation No 40/94 by finding that the applicant had not furnished proof that it continues to make use of 'TRAXDATA' and by improper application of the criteria of likelihood of confusion between the conflicting trade marks.

- the opposition No B 311 318 dated 2 October 2000 be rejected as far as this opposition was upheld by the decision of the Opposition Division of 21 March 2006;
- the defendant be ordered to bear the costs of the proceedings;
- the intervener be ordered to bear the costs of the proceedings before the Office for Harmonisation.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'P&G PRESTIGE BEAUTE' for *inter alia* goods in class 3

Proprietor of the mark or sign cited in the opposition proceedings: Prestige Cosmetics Srl

Mark or sign cited: The national figurative marks 'prestige' for goods in class 3

Decision of the Opposition Division: Opposition partially upheld

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94 since there is no likelihood of confusion between the trade mark applied for and the earlier marks as the goods covered by the trade marks are dissimilar and the trade marks clearly differ.

Action brought on 24 September 2007 — Procter & Gamble v OHIM — Prestige Cosmetics (P&G PRESTIGE BEAUTE)

(Case T-366/07)

(2007/C 283/62)

Language in which the application was lodged: English

Parties

Applicant: The Procter & Gamble Company (Cincinnati, United States) (represented by: K. Sandberg, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Prestige Cosmetics Srl (Anzola Emilia, Italy)

Form of order sought

- The decision of the Second Board of Appeal of 19 July 2007 in Case R 681/2006-2 be overruled;

Action brought on 17 September 2007 — Dow AgroSciences and Others v Commission

(Case T-367/07)

(2007/C 283/63)

Language of the case: English

Parties

Applicants: Dow AgroSciences Ltd (Hitchin, United Kingdom), DOW AgroSciences BV (Rotterdam, Netherlands), Dow AgroSciences Danmark A/S (Lyngby-Taarbæk, Denmark), Dow AgroSciences GmbH (Stade, Germany), Dow AgroSciences SAS (Mougins, France), Dow AgroSciences Export SAS (Mougins, France), Dow AgroSciences Hungary kft (Budapest, Hungary), Dow AgroSciences Italia Srl (Milan, Italy), Dow AgroSciences Polska sp. z o.o. (Warsaw, Poland), Dow AgroSciences Distribution SAS (Mougins, France), Dow AgroSciences Iberica, SA (Madrid, Spain), Dow AgroSciences s.r.o. (Prague, Czech Republic) and Dow AgroSciences LLC (Indianapolis, United States) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: Commission of the European Communities