

— an order that the Commission pay its own costs and FIFA's costs in connection with these proceedings.

### Pleas in law and main arguments

Under Article 3a of Council Directive 89/552/EEC <sup>(1)</sup> a Member State may draw up a list of sporting or other events that are considered to be events of 'major importance to society'. The events on the list cannot be the subject of exclusive broadcasting rights which prevent a substantial proportion of the public in that Member State from watching the event via live coverage or deferred coverage on free television.

The applicant seeks the annulment of Commission Decision 2007/730/EC of 16 October 2007 <sup>(2)</sup> by which the Commission declared that the list drawn up by the United Kingdom pursuant to Article 3a(1) of Council Directive 89/552/EEC, listing all 64 FIFA World Cup matches, was compatible with Community law. This prevents FIFA from granting exclusive licenses to broadcasters in respect of live broadcasting in the United Kingdom of any of the FIFA World Cup matches.

In support of its application, the applicant submits that the Commission's decision is vitiated by an infringement of an essential procedural requirement by failing to state reasons for approving the inclusion of all 64 matches in the FIFA World Cup on the list of the United Kingdom.

Furthermore, the applicant contends that the contested decision infringes Directive 89/552/EEC, as the procedure followed by the British authorities for the adoption of the measure was not clear and transparent, and as all the matches played within the framework of the FIFA World Cup were not of major importance for the British society.

The applicant moreover alleges that the contested decision infringes the applicant's property rights by preventing it from granting exclusive licenses in respect of live broadcasting in the United Kingdom for any of the matches played within the framework of the FIFA World Cup.

The applicant further claims that the contested decision infringes the provisions of the EC Treaty on freedom to provide services by depriving the applicant from licensing and broadcasters from acquiring live exclusive rights to any of the FIFA World Cup matches broadcasted in the United Kingdom.

The applicant also claims that the contested decision infringes the provisions of the EC Treaty on competition by permitting an abusive behaviour of a joint dominant position and/or anti-competitive agreement for the acquisition of live broadcasting rights to international football matches in the United Kingdom

and by restricting competition on related free-to-air television, advertising and premium sports pay-television markets.

Finally, the applicant alleges that the contested decision infringes the provisions of the EC Treaty on the right of establishment by restricting access to live exclusive broadcasting rights in the United Kingdom to any of the matches played within the framework of the FIFA World Cup by entrants or potential entrants into the relevant British market.

<sup>(1)</sup> Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23).

<sup>(2)</sup> Commission Decision 2007/730/EC of 16 October 2007 on the compatibility with Community law of measures taken by the United Kingdom pursuant to Article 3a(1) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 2007 L 295, p. 12).

### Action brought on 12 February 2008 — Axis AB v OHIM — Etra Investigación y Desarrollo (ETRAX)

(Case T-70/08)

(2008/C 107/52)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Axis AB (Lund, Sweden) (represented by: J. Norderyd, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Etra Investigación y Desarrollo SA (Valencia, Spain)

### Form of order sought

— Annul the decision of the Second Board of Appeal of 27 November 2007 in Case R 334/2007-2;

— order OHIM to pay the costs.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The Community word mark 'ETRAX' for goods and services in classes 9 and 42 — Application No 3 890 291

*Proprietor of the mark or sign cited in the opposition proceedings:* Etra Investigacion y Desarrollo SA

*Mark or sign cited:* The national figurative marks containing the word element 'ETRA' and the letters 'T' and 'D' joined by the sign '+' for goods and services in classes 9 and 42

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Upheld the appeal and annulled the contested decision

*Pleas in law:* Infringement of Rule 49 of Commission Regulation (EC) No 2868/95<sup>(1)</sup> ('CTMIR') and Article 8(1)(b) of Council Regulation (EC) No 40/94 ('CTMR').

The applicant claims that the Board of Appeal erred in finding that the appeal was filed in accordance with Rule 49(1) CTMIR which states that the Board of Appeal must reject an appeal as inadmissible if it doesn't comply with Articles 57, 58 and 59 CTMR and Rule 48(1)(c) CTMIR. Further, the applicant contends that since the language deficiency was not remedied by the opponent before the expiry of the time-limit set to lodge an appeal, namely, 12 February 2007, the Board of Appeal allegedly infringed Rule 49(1) and (2) CTMIR.

<sup>(1)</sup> Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 303, p. 1).

**Action brought on 11 February 2008 — Travel Servis v OHIM — Eurowings Luftverkehrs (smartWings)**

(Case T-72/08)

(2008/C 107/53)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Travel Service a.s. (Prague, Czech Republic) (represented by: S. Hejdrová)

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

*Other party to the proceedings before the Board of Appeal:* Eurowings Luftverkehrs AG (Dortmund, Germany)

**Form of order sought**

— Alter the contested decision of the Second Board of Appeal in Case R 1515/2006-2 as follows:

- annul the Opposition Division decision relating to opposition proceedings No B 782 351 of 29 September 2006 in its entirety;
- order the opponent to bear the costs incurred by the applicant with respect to the opposition and the appeal proceedings before the OHIM.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The applicant

*Community trade mark concerned:* The figurative Community trade mark 'smartWings' for goods and services in classes 16, 21, 37, 39, 41 and 43 — Application No 3 650 595

*Proprietor of the mark or sign cited in the opposition proceedings:* Eurowings Luftverkehrs AG

*Mark or sign cited:* The national and international word mark 'EuroWings' for goods and services in classes 16 and 41, the national and international word mark 'EUROWINGS' for goods and services in classes 39 and 42 and the national word mark 'WINGSGLASS' for goods and services in classes 16, 39, 41 and 42

*Decision of the Opposition Division:* Upheld the opposition in part

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94 and of essential procedural requirements enshrined in Articles 73 and 79 CTMR.