

— order the Commission to pay the applicant's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

By means of present application, the applicant seeks the partial annulment of Commission Decision 2009/95/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Mediterranean biogeographical region (notified under document number C(2008) 8049) ⁽¹⁾ insofar as it designates ES6120032 "Estrecho oriental" site so as to include Gibraltar Territorial Waters (both within and outside UKGIB0002) and an area of the High Seas.

The applicant puts forward the following pleas in law in support of its claims.

First, the applicant submits that the contested decision is in breach of the EC Treaty in that:

- the Commission made manifest errors of law in that, in breach of Article 299 EC, it has designated an area of one Member State, British Gibraltar Territorial Waters, as forming part of another Member State, Spain;
- it was adopted in breach of Articles 3(2) and 4(1) of the Directive 92/43/ECC ⁽²⁾ and in manifest violation of the scheme of that directive, as it purports to attribute "site of Community importance" status to a large part of the site ES6120032 which is not in Spanish territory and which is national to another Member State and in clear breach of Article 2 of the same directive to a part of the High Seas which do not form part of the European territory of Member States and over which Spain does not, and cannot, exercise any jurisdiction or sovereignty;
- it contains an error in law in that it purports to grant "site of Community importance" status and Directive 92/43/ECC obligations to parts of ES6120032, being under Spanish sovereignty, which overlap with UKGIB0002, being under United Kingdom sovereignty, thereby purporting to apply two separate and distinct legal, penal, administrative and monitoring regimes in the same site area;
- it was adopted in breach of Article 300(7) EC and provisions of Part XII of the United Nations Convention on the Law of the Sea 1982 (UNCLOS), the Barcelona Convention on the Protection of the Mediterranean Sea 1976 and the 1995 Protocol to that Convention as it requires Spain to comply with the same environmental obligations in the part of British Gibraltar Territorial Waters included in ES6120032 as are required to be complied with by the UK/Gibraltar in the same area;

Second, the applicant claims that the contested decision is vitiated by manifest errors of facts which lead the Commission to an improper application of the law and infringements of the EC Treaty since it is based on information which is false and misleading.

Third, the applicant contends that the contested decision was adopted in breach of the principle of legal certainty in that the

automatic effect of the "overlapping" designation of the sites is to apply two systems of law (Gibraltar's and Spain's law implementing the Directive 92/43/ECC) in the same area for the same purpose.

In the alternative, the applicant claims that the contested decision was adopted in breach of the principles set for in Articles 2, 3, 89 and 137(1) UNCLOS as a matter of customary international law. As a further alternative, it submits that the decision, to the extent it designates ES6120032 as encompassing British Gibraltar Territorial Waters is in breach of the principle of customary international law that the territorial sea extends, as a minimum, to three nautical miles.

⁽¹⁾ OJ 2009 L 43, p. 393

⁽²⁾ 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

Action brought on 11 May 2009 — Spa Monopole v OHIM — Club de Golf Peralada (WINE SPA)

(Case T-183/09)

(2009/C 153/93)

Language in which the application was lodged: English

Parties

Applicants: Spa Monopole, compagnie fermière de Spa SA/NV (Spa, Belgium) (represented by: L. De Brouwer, E. Cornu and O. Klimis, lawyers)

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

Other party to the proceedings before the Board of Appeal: Club de Golf Peralada, SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 March 2009 in joined cases R 1231/2005-4 and R 1250/2005-4; and

— Order OHIM to pay the costs

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark "WINE SPA", for goods and services in classes 3, 5, 16, 24, 25 and 42

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

Mark or sign cited: Various national, international and Community trade mark registrations of the mark “SPA” for goods and services in classes 3, 32 and 42, respectively; Benelux and international trade mark registration of the mark “LES THERMES DE SPA” for goods and services in classes 3 and 42; German trade mark registration of the mark “SPA MONOPOLE S.A. SPA” for goods in class 3; S.A. SPA Monopole, Compagnie fermière de Spa, en abrégé S.A. Spa Monopole N.V., société anonyme, company name protected in Belgium; Les Thermes de Spa, Place Royale 2, 4900 Spa, Belgium, trade name protected in Belgium

Decision of the Opposition Division: Upheld the opposition partially

Decision of the Board of Appeal: Partially annulled the decision of the Opposition Division and rejected the opposition in its entirety

Pleas in law: Infringement of Articles 75, second sentence and 76(1), second sentence of Council Regulation 207/2009 ⁽¹⁾ as the decision of the Board of Appeal was taken in breach of the principle of the right to a fair hearing, as well as in breach of the adversarial principle; Infringement of Article 8(5) of Council Regulation 207/2009 as the Board of Appeal based its assessment of the distinctive character of the earlier trade mark “SPA” on erroneous and non-established elements and failed to assess the similarity between the trade marks concerned in relation to the goods for which they are registered or applied for. Finally, the Board of Appeal failed to examine whether the use of the Community trade mark concerned was likely to take unfair advantage of, or to be detrimental to the distinctive character and the reputation of the earlier mark “SPA”, thereby infringing Article 8(5) of Council Regulation 207/2009.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, JO L 78, p. 1

**Order of the Court of First Instance of 5 May 2009 —
Roche v Council and Commission**

(Joined Cases T-142/94 and T-143/94) ⁽¹⁾

(2009/C 153/94)

Language of the case: English

The President of the Eighth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 174, 25.6.1994.

**Order of the Court of First Instance of 8 May 2009 —
Opus Arte UK v OHIM — Arte (OPUS ARTE)**

(Case T-170/07) ⁽¹⁾

(2009/C 153/95)

Language of the case: English

The President of the Seventh Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 170, 21.7.2007.

**Order of the Court of First Instance of 5 May 2009 —
Commission v Eurgit et Cirese**

(Case T 470/08) ⁽¹⁾

(2009/C 153/96)

Language of the case: Italian

The President of the Fourth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 327, 20.12.2008.

**Order of the Court of First Instance of 4 May 2009 —
Rundpack v OHIM (Representation of a tumbler)**

(Case T-503/08) ⁽¹⁾

(2009/C 153/97)

Language of the case: German

The President of the Third Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 44, 21.2.2009.