

This part of the plea also complains that the General Court carried out its comparison of the signs on the basis (not substantiated in the proceedings) of the reputation and/or high degree of distinctive character of the trade mark 'Rioja'.

B. The second plea in law alleges infringement, by analogy, of Article 43 of Regulation No 40/94⁽²⁾, now Article 42 of Regulation No 207/2009.

— This complaint alleges that the General Court restricted the list of goods and services actually designated because of the declaration of the future use of the trade mark applied for, something which is possible only for trade marks which have been registered for at least five years and subject to proof of use requested by the proprietor of the mark at issue pursuant to Article 42(2) of Regulation No 207/2009.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 (OJ 2009 L 78, p. 1).

⁽²⁾ Case C-39/97 *Canon* [1998] ECR I-5507.

⁽³⁾ *General Motors* [1999] ECR I-542.

⁽⁴⁾ *Windsurfing Chiemsee* [1999] ECR I-2779.

⁽⁵⁾ OJ 1994 L 11, p. 1.

Action brought on 4 August 2010 — European Commission v Kingdom of Belgium

(Case C-397/10)

(2010/C 301/10)

Language of the case: French

Parties

Applicant: European Commission (represented by: J.-P. Keppenne and I.V. Rogalski, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by imposing the following requirements in respect of the activities of temporary work agencies — the business of providing labour must be the undertaking's sole object (in the territory of the Brussels-Capital region), the agency must take a specific legal form (in the territory of the Brussels-Capital region) and must hold minimum share capital of EUR 30 987 (in the Flemish Region) — the Kingdom of Belgium failed to comply with its obligations under Article 56 TFEU;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

In support of its action, the Commission puts forward three complaints alleging infringement of Article 56 of the Treaty on the Functioning of the European Union.

In its first complaint, the applicant claims that the requirement that the business of providing labour must be the undertaking's sole object constitutes a significant barrier for undertakings established in other Member States which are authorised to engage in businesses of a different nature there. That measure obliges such undertakings to amend their statutes in order to provide services, even on a temporary basis, in the Brussels-Capital region.

In its second complaint, the Commission states that the requirement that an undertaking established in another Member State must possess a specific legal form or legal status constitutes a significant restriction on the freedom to provide services. The objective of protecting workers, relied upon by the defendant by way of justification, could be attained by less restrictive measures, such as a requirement that an undertaking must show that it has appropriate insurance.

In its third complaint, the applicant criticises the requirement imposed by the Flemish Region that an undertaking must hold minimum share capital of EUR 30 987, since such a requirement means that some undertakings established in other Member States might have to alter their share capital in order to provide services, even on a temporary basis, in Belgium. Less restrictive measures, such as depositing a guarantee or taking out insurance, would allow the defendant to attain its objective of protecting workers.

Appeal brought on 6 August 2010 by Mediaset SpA against the judgment of the General Court (Second Chamber) delivered on 15 June 2010 in Case T-177/07: Mediaset SpA v European Commission, supported by Sky Italia Srl

(Case C-403/10 P)

(2010/C 301/11)

Language of the case: English

Parties

Appellant: Mediaset SpA (represented by: K. Adamantopoulos, Dikigoros and G. Rossi, avvocato)

Other parties to the proceedings: European Commission, Sky Italia Srl

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court of 15 June 2010 in Case T-177/07;