

The appellant submits in that regard, first, that the General Court found that there was a likelihood of confusion without taking into account all the relevant aspects of the present case, including the non-use of earlier marks on the market, the taking into account of the distinctive character of the earlier marks, the actual presence on the market of other products of the same type bearing different 'G' signs, and the level of importance accorded by the relevant public to that type of sign to identify a commercial mark. The appellant further submits that the General Court found that there had been an incorrect assessment of the similarity between the conflicting marks resulting, *inter alia*, from a distortion of the facts, an incorrect assessment of the distinctive and dominant character of the earlier marks and an incorrect assessment of the nature of the products at issue.

The appellant submits, second, that there was an incorrect application of the case-law by the General Court, in that it failed to take account of earlier national decisions, in disregard of Article 17 of Regulation No 207/2009.

Lastly, the appellant submits that there has been infringement of the principle of equal treatment by the General Court in that it conducted a partial assessment of the similarity between the signs, whilst ignoring the word content of the mark applied for and comparing the signs on the basis of excessively broad criteria.

⁽¹⁾ OJ 1994 L 11, p. 1.

⁽²⁾ OJ 2009 L 78, p. 1.

Reference for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 6 July 2011 — G. Brouwer v Staatssecretaris van Economische Zaken, Landbouw en Innovatie

(Case C-355/11)

(2011/C 282/14)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellant: G. Brouwer

Respondent: Staatssecretaris van Economische Zaken, Landbouw en Innovatie

Questions referred

1. Must Directive 91/629/EEC ⁽¹⁾ be interpreted as meaning that the management requirements within the meaning of Article 4 of Regulation (EC) No 1782/2003 ⁽²⁾ arising out of that directive are also applicable to calves which are kept confined by a farmer in the context of a dairy farming operation?

2. If that question is answered in the negative, does the fact that a Member State has implemented that directive by means of legislation which declares the aforementioned requirements to be nevertheless applicable to such calves, give grounds, in the event of an infringement of those requirements in that Member State, for deeming a reduction or exclusion under Article 6 of Regulation (EC) No 1782/2003 to be necessary?

⁽¹⁾ Council Directive of 19 November 1991 laying down minimum standards for the protection of calves (OJ 1991 L 340, p. 28).

⁽²⁾ Council Regulation of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

Action brought on 8 July 2011 — European Commission v Kingdom of Spain

(Case C-360/11)

(2011/C 282/15)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Lozano Palacios, Agent)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that, by applying a reduced rate of VAT to:

— Medicinal substances which may be used habitually or are suited to the production of medicinal products, in accordance with paragraph 1(5) of the first section of Article 91 and paragraph 1(3) of the second section of Article 91 of the Ley española del IVA (Spanish Law on VAT);

— Sanitary products, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, but which are not 'normally intended to alleviate or treat disabilities, for the exclusive personal use of the disabled', in accordance with the second subparagraph of paragraph 1(6) of the first section of Article 91 of the Spanish Law on VAT;

— Aids and equipment which may be used essentially or primarily to treat physical disabilities in animals, in accordance with the first subparagraph of paragraph 1(6) of Article 91 of the Spanish Law on VAT;