

**Operative part of the judgment**

The Court hereby:

1. Declares that, by altering the demarcation of the 'Moura, Mourão, Barrancos' Special Protection Area, thereby excluding from it areas providing a habitat for species of wild birds for whose protection that area was designated, the Portuguese Republic has failed to fulfil its obligations under Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;
2. Orders the Portuguese Republic to pay the costs.

(<sup>1</sup>) OJ C 155, 25.6.2005.

**Judgment of the Court (Third Chamber) of 18 July 2006 — Sergio Rossi SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Sissi Rossi Srl**

(Case C-214/05 P) (<sup>1</sup>)

*(Appeals — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Word mark SISSI ROSSI — Opposition by the holder of the earlier word mark MISS ROSSI — Arguments presented for the first time at the hearing — Offers of evidence)*

(2006/C 224/23)

Language of the case: Italian

**Parties**

*Appellant:* Sergio Rossi SpA (represented by: A. Ruo, avvocato)

*Other party to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: O. Montalto and P. Bullock, Agents)

*Intervener in support of the defendant:* Sissi Rossi Srl, established in Castenaso di Villanova (Italy) (represented by: S. Vereá, avvocato)

**Re:**

Appeal against the judgment of the Court of First Instance (Second Chamber) of 1 March 2005 in Case T-169/03 *Sergio Rossi SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* — Dismissal of an action for annulment brought by the proprietor of a national and international word mark 'MISS ROSSI' for goods within Class 25, against Decision R 569/2002-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 28 February 2003 setting aside the decision of the Opposition

Division refusing to register as a Community word mark 'SISSI ROSSI' in respect of goods in classes 14, 15, 5 and 26

**Operative part of the judgment**

The Court:

1. Dismisses the appeal;
2. Orders Sergio Rossi SpA to pay the costs.

(<sup>1</sup>) OJ C 182, 23.7.2005.

**Judgment of the Court (Third Chamber) of 13 July 2006 (reference for a preliminary ruling from the Supreme Court — Ireland) — Sam Mc Cauley Chemists (Blackpool) Ltd, Mark Sadja v Pharmaceutical Society of Ireland, Minister for Health and Children, Ireland, Attorney General**

(Case C-221/05) (<sup>1</sup>)

*(Directive 85/433/EEC — Mutual recognition of diplomas — Pharmacists — Recognition of diplomas held by pharmacists working in new pharmacies open to the public — Scope of the discretion enjoyed by Member States)*

(2006/C 224/24)

Language of the case: English

**Referring court**

Supreme Court

**Parties to the main proceedings**

*Applicants:* Sam Mc Cauley Chemists (Blackpool) Ltd, Mark Sadja

*Defendants:* Pharmaceutical Society of Ireland, Minister for Health and Children, Ireland, Attorney General

**Re:**

Reference for a preliminary ruling — Supreme Court of Ireland — Interpretation of Article 2(1) and (2) of Council Directive 85/433/EEC of 16 September 1985 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy (OJ 1985 L 253, p. 37) — Scope of the discretion enjoyed by Member States in regard to the recognition of diplomas held by pharmacists working in new pharmacies open to the public

**Operative part of the judgment**

Article 2 of Council Directive 85/433/EEC of 16 September 1985 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the field of pharmacy, must be interpreted as meaning that a Member State which complies merely with the minimal level of recognition of diplomas laid down by that directive is not exercising any discretion conferred by that directive.

(<sup>1</sup>) OJ C 182, 23.07.2005.

**Order of the Court (Second Chamber) of 11 May 2006 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio — Italy) — Confcooperative, Unione regionale della Cooperazione Fvg Federagricole, Friulvini Soc. coop. rl, Cantina Sociale di Ramuscello e S. Vito v Ministero delle Politiche Agricole e Forestali, Regione Veneto**

(Case C-231/04) (<sup>1</sup>)

*(First subparagraph of Article 104(3) of the Rules of Procedure — External relations — Agreement between the EC and Hungary on the reciprocal protection and control of wine names — Protection in the Community of a name relating to certain wines originating in Hungary — Geographical indication ‘Tokaj’ — Exchange of letters — Possibility of using the word ‘Tocai’ in the term ‘Tocai friulano’ or ‘Tocai italico’ for the description and presentation of certain Italian wines, in particular quality wines produced in specified regions (‘quality wines psr’), during a transitional period expiring on 31 March 2007 — Exclusion of that possibility at the end of the transitional period — Validity — Legal basis — Article 133 EC — Principles of international law relating to treaties — Articles 22 to 24 of the TRIPs Agreement — Protection of fundamental rights — Right to property)*

(2006/C 224/25)

Language of the case: Italian

**Referring Court**

Tribunale Amministrativo Regionale del Lazio

**Parties**

*Applicants:* Confcooperative, Unione regionale della Cooperazione Fvg Federagricole, Friulvini Soc. coop. rl, Cantina Sociale di Ramuscello e S. Vito

*Defendants:* Ministero delle Politiche Agricole e Forestali, Regione Veneto

**Re:**

Reference for a preliminary ruling — Tribunale Amministrativo Regionale del Lazio — Validity of the EC-Hungary Agreement of 23 November 1993 on the reciprocal protection and control of wine names — Validity of an exchange of letters between the parties to the agreement establishing a ban on use of the name ‘Tocai’ in Italy from 2007 onwards

**Operative part of the order**

- (1) The Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, concluded and approved on behalf of the Community by Decision 93/742/Euratom, ECSC, EC of the Council and of the Commission of 13 December 1993 does not constitute the legal basis of Council Decision 93/724/EC of 23 November 1993 concerning the conclusion of an Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names.
- (2) Article 133 EC, as referred to in the preamble to Decision 93/724, constitutes an appropriate legal basis for the conclusion by the Community alone of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names.
- (3) The ban on the use of the name ‘Tocai’ in Italy after 31 March 2007, resulting from the exchange of letters concerning Article 4 of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, is not contrary to the regime governing homonymous geographical indications in Article 4(5) of that Agreement.
- (4) The joint declaration regarding Article 4(5) of the Agreement between the European Community and the Republic of Hungary on the reciprocal protection and control of wine names, insofar as it outlines, in its first paragraph, that, as regards Article 4(5)(a) of the same Agreement, the contracting parties noted that, at the time of the negotiations, they did not know of any specific case where the provisions in question might apply, does not constitute a manifestly erroneous interpretation of reality.
- (5) Articles 22 to 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, found at Annex 1 C to the Agreement establishing the World Trade Organisation, concluded on behalf of the European Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994, must be interpreted as meaning that, in a case such as the present one concerning homonymy between a geographical indication of a non-member country and a vine name used for the description and presentation of certain Community wines produced from those vines, these provisions do not require that both the names can continue to be used in the future, notwithstanding the twofold fact that they have been used in the past by the respective producers either in good faith or for at least 10 years prior to 15 April 1994 and that each name indicates clearly the country or region or area of origin of the protected wine to which it refers in such a way as not to mislead consumers.