

JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

10 May 2006 *

In Case T-279/03,

Galileo International Technology LLC, established in Bridgetown (Barbados),

Galileo International LLC, established in Wilmington, Delaware (United States),

Galileo Belgium SA, established in Brussels (Belgium),

Galileo Danmark A/S, established in Copenhagen (Denmark),

Galileo Deutschland GmbH, established in Frankfurt am Main (Germany),

Galileo España SA, established in Madrid (Spain),

Galileo France SARL, established in Roissy-en-France (France),

Galileo Nederland BV, established in Hoofddorp (Netherlands),

Galileo Nordiska AB, established in Stockholm (Sweden),

* Language of the case: French.

Galileo Portugal Ltd, established in Alges (Portugal),

Galileo Sigma Srl, established in Rome (Italy),

Galileo International Ltd, established in Langley, Berkshire (United Kingdom),

The Galileo Co., established in London (United Kingdom),

Timas Ltd, established in Dublin (Ireland),

represented by C. Delcorde, J.-N. Louis, J.-A. Delcorde and S. Maniatopoulos,
lawyers, with an address for service in Luxembourg,

applicants,

v

Commission of the European Communities, represented by N. Rasmussen and
M. Huttunen, acting as Agents, and by A. Berenboom and N. Van den Bossche,
lawyers, with an address for service in Luxembourg,

defendant,

II - 1297

ACTION for damages, first, to ensure that the Commission ceases to use the word 'Galileo' in relation to the Community project for a global satellite radio navigation system or to encourage third parties to use that word and, second, to make good the damage purportedly suffered by the applicants on account of the Commission's use and promotion of that word, which, it is claimed, is identical to trade marks registered by the applicants as well as to their trade names,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of J. Pirrung, President, A.W.H. Meij, N.J. Forwood, I. Pelikánová and S. Papasavvas, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 30 November 2005,

gives the following

Judgment

Facts

1. *The applicants' use of the word 'Galileo'*

- 1 The Galileo group of companies, to which the applicants belong, was founded in 1987 by 11 North American and European airlines. The group is a world leader in

the offer and supply of electronic services to the air transport, travel, leisure and hotel industry sectors as regards access to data relating to offers, timetables and prices. Its client base is essentially made up of travel agencies, hotel companies, car rental companies, airlines, tour operators and cruise lines.

- 2 The word 'Galileo' is a component of the applicants' trade, company and domain names. The applicant Galileo International Technology LLC is the proprietor of various national word marks and figurative marks registered between 1987 and 1990 of which that word is either the sole component or one of several components, such as the word mark GALILEO which was registered in France on 17 September 1987, in Germany on 18 August 1988 and in Spain on 3 October 1988.

- 3 Galileo International Technology LLC is, in addition, the proprietor of a number of Community trade marks registered pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended, at the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM). The trade marks in question are the following figurative marks:



powered by Galileo

- 4 The first of those figurative marks was registered on 4 March 1999 and then again on 9 March 2004; the second was registered on 20 January 2000. Galileo International Technology LLC is also proprietor of the word mark GALILEO, registered on 1 October 2003. The marks were all registered in respect of goods and services in Classes 9, 16, 35, 38, 39, 41 and 42 within the meaning of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.
- 5 Those Community marks and national marks ('the applicants' trade marks') were registered in order to designate, inter alia, telecommunication services in the nature of transmission of data, computer programs relating to air transport, car hire and travel reservations, entertainment services, services in the accommodation and catering sectors as well as electrical and computer apparatus, computers, software and word processing.

2. The Commission's use of the word 'Galileo'

- 6 On 10 February 1999 the Commission adopted a communication, entitled 'Galileo — Involving Europe in a new generation of satellite navigation services' (COM(1999) 54 final). By that communication, the Commission sought to facilitate the establishment of a satellite system named Galileo to meet the needs of civil users throughout the whole world in the fields of radio navigation, positioning and synchronisation. According to the Commission, Galileo will be compatible with the two existing operational systems — the American GPS (Global Positioning System) and the Russian Glonass (Global Orbiting Navigation Satellite System) — and could provide a new global satellite navigation system, the GNSS (Global Navigation Satellite System). It was intended from the outset that the private sector would participate financially in the costs of implementing the Galileo project.

- 7 By its resolution of 19 July 1999 on the involvement of Europe in a new generation of satellite navigation services — Galileo — Definition phase (OJ 1999 C 221, p. 1), the Council approved the communication from the Commission referred to above.
- 8 On 22 November 2000 the Commission adopted a communication to the European Parliament and the Council on Galileo (COM(2000) 750 final), which describes the results of the definition phase of the Galileo programme and reports on its economic and financial aspects as well as its management structure. As regards the programme's successive phases, the communication refers to a satellite development phase (2001 to 2005), a deployment phase in respect of satellite manufacture and launch (2006 and 2007) and an economic and commercial operational phase for the new system (from 2008).
- 9 By its resolution of 5 April 2001 on the Galileo project (OJ 2001 C 157, p. 1), the Council approved the necessary components for the development phase. In particular, it called on the Commission to launch a tendering procedure in order to enable private sector involvement in the project and to identify the commercial services to be provided by Galileo. The Council emphasised also the interest in the prospect of the private sector entering into a firm financial commitment allowing it to participate in the deployment phase.
- 10 By Regulation (EC) No 876/2002 of 21 May 2002 setting up the Galileo Joint Undertaking (OJ 2002 L 138, p. 1), the Council, acting on a proposal from the Commission, applied Article 171 EC and set up that joint undertaking with the aim of ensuring the management of the project for the research, development and demonstration phases, and of mobilising the funds assigned to the Galileo programme. The founder members of the Joint Undertaking were the European Community, represented by the Commission, and the European Space Agency (ESA); any private undertaking satisfying the criteria laid down in that regard could also become a member.

11 In its communication to the European Parliament and the Council of 15 October 2002, entitled ‘State of progress of the Galileo programme’ (OJ 2002 C 248, p. 2), the Commission stated that the Galileo programme would be managed by a private entity during the deployment and commercial operation phases. To that end, the Galileo Joint Undertaking would have to issue a call for tenders in order to select the private consortium which would be awarded the concession for the deployment and operation of the system.

12 Before the Court of First Instance, the Commission emphasised the crucial technological, economic and strategic importance of a European radio navigation system, inasmuch as numerous industrial applications are dependent on mastery of that technology. In that regard, the Commission mentioned, inter alia, the management of transport systems (guidance of motor vehicles), the conduct of environmental policies, land management, meteorology, geology, public works, energy, the prevention of natural catastrophes or industrial hazards, support for civil protection systems in the event of catastrophes, agricultural control policies and the physical safety of individuals. According to the Commission, the European system will in future provide:

- a free service intended for ‘general public’ purposes;
- a commercial service intended for professional purposes;
- an ‘essential’ service for use where human life is at stake, such as air or sea navigation;
- a search and rescue service aimed at improving existing emergency assistance services;

- a government service, reserved for the requirements of civil protection, national security and the rule of law.

¹³ The Commission explained that the cost of the development phase was EUR 1.1 billion, financed in equal parts by the European Union and the ESA. The cost of the deployment phase, EUR 2.1 billion, would be principally borne by the future concession-holder of the system. As far as the commercial operation phase is concerned, the Commission declared before the Court that this was intended to be launched in 2010.

3. The Commission's application for registration of a Community trade mark

¹⁴ On 21 June 2002 the Commission applied pursuant to Regulation No 40/94 for registration of a Community trade mark, namely a figurative sign, in colour. The sign is a stylised sphere, inspired by the logo of the European Union and of the ESA, which incorporates the word 'Galileo':



The trade mark application relates to ‘research/development services in the field of satellite radio navigation’ and falls within Class 42 for the purposes of the Nice Agreement.

- 15 On 14 March 2003 the applicant Galileo International LLC entered an opposition to the registration of that mark, pursuant to Article 42 of Regulation No 40/94. By decision of 29 September 2005, the Opposition Division of OHIM dismissed the opposition. The applicant challenged that decision before the Boards of Appeal of OHIM.
- 16 In August 2003 the Commission and the ESA lodged the emblem of the Galileo satellite radio navigation programme at the World Intellectual Property Organisation (WIPO) in Geneva pursuant to the Paris Convention for the Protection of Industrial Property of 20 March 1883, last revised at Stockholm on 14 July 1967 and amended on 28 September 1979 (*United Nations Treaty Series*, Vol. 828, No 11847, p. 108; ‘the Paris Convention’).

4. *Exchange of correspondence between the applicants and the Commission*

- 17 By letter of 30 April 2001, the applicants protested to the Commission against the use of the word ‘Galileo’ as the name of its radio navigation project. They argued that that usage was causing them damage and infringing their trade mark rights. On 4 February 2002 the Commission replied, stating that the use of the word ‘Galileo’ for its project did not constitute an infringement of trade mark rights.

18 Subsequently, the applicants and the Commission engaged in an intensive exchange of correspondence. The applicants maintained their view that the Commission was using the word 'Galileo' in a commercial context, while encouraging third parties to do the same, and was doing so in relation to goods and services similar to those covered by the applicants' trade marks. The Commission, on the other hand, took the view that until 2008 Galileo would remain a research and technological development programme which, until then, would not generate any commercial revenue, and that the reservation services provided by the applicants were activities entirely different from that of satellite positioning.

5. Judicial and administrative actions brought by the applicants alongside the present action

19 The applicant Galileo International Technology LLC challenged the use of the word 'Galileo' by the Belgian company Galileo Industries before the Tribunal de commerce de Bruxelles (Brussels Commercial Court). The objects of Galileo Industries are to take part in the development of activities related to the space industry and it is bringing together the main European manufacturers with an interest in the Galileo programme. By judgment of 1 September 2003, the Tribunal de commerce dismissed the action, ruling inter alia that the applicant's activity sector differed from that of Galileo Industries. The applicant appealed against that decision. The case is currently pending before the Cour d'appel de Bruxelles (Brussels Court of Appeal).

20 In addition, Galileo International Technology LLC has entered various oppositions before OHIM against applications by the German company Astrium to register trade marks incorporating the word 'Galileo'. Astrium, as a subsidiary of the European Aeronautic Defence and Space Company (EADS), counts as one of the largest European space navigation companies and also has an interest in the Galileo programme.

- 21 Lastly, Galileo International Technology LLC has brought an action before the Landgericht München (Regional Court, Munich) for Astrium to be prohibited from using the word 'Galileo' to cover a number of goods and services, and for a declaration of Astrium's liability, so as to obtain compensation for the damage caused by that use. Allowing the application, that court ruled on 17 February 2004 that the activities in question were similar and that the opposing signs were likely to give rise to confusion. That decision was upheld by a judgment of the Oberlandesgericht München (Higher Regional Court, Munich) of 13 January 2005 which is now *res judicata*, since the appeal lodged by Astrium was dismissed by order of the Bundesgerichtshof (German Federal Court) on 24 November 2005.

Procedure and forms of order sought by the parties

- 22 The applicants brought the present action by application lodged at the Registry of the Court of First Instance on 5 August 2003.
- 23 Upon hearing the Report of the Judge-Rapporteur, the Court (Second Chamber) decided to open the oral procedure without any prior measures of inquiry. However, it raised a series of questions to which the parties responded within the time-limit specified. After the parties had been heard, the Court referred the case to the Second Chamber, Extended Composition.
- 24 The parties presented oral argument and answered questions put to them by the Court at the hearing on 30 November 2005.

25 The applicants claim that the Court should:

- prohibit the Commission from:
 - making any use of the word ‘Galileo’ in relation to the satellite radio navigation system project;
 - directly or indirectly encouraging third parties to use that word in the context of that project;
 - having any part in the use of that word by any third party;
- order the Commission to pay the applicants, ‘jointly and severally’, the amount of EUR 50 million as compensation for the material damage suffered;
- in the alternative, in the event that the Commission continues to use the word ‘Galileo’, order it to pay the applicants the sum of EUR 240 million;
- order the Commission to pay the applicants default interest, with effect from the date of filing the application, and calculated by reference to the European Central Bank rate plus two percentage points;
- order the Commission to pay the costs.

26 The Commission contends that the Court should:

- dismiss the action as inadmissible in so far as it is based on allegations of infringement of trade marks, trade names, company names or domain names;
- as to the remainder, dismiss the action as unfounded;
- order the applicants to pay the costs.

Law

27 It should be noted that the applications for injunctions and compensation brought by the applicants pursuant to Article 235 EC and the second paragraph of Article 288 EC are based on the alleged infringement of their trade mark rights as conferred by Article 5(1)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1; ‘the Directive’) and, in essence, by Article 9(1)(b) of Regulation No 40/94 as well as on an infringement of the applicants’ company, trade and domain names, as protected by Article 8 of the Paris Convention.

1. *Admissibility*

Arguments of the parties

28 The Commission submits that the action is inadmissible given that some of the grounds of challenge relied upon in the application do not meet the necessary requirements of clarity and precision.

- 29 In so far as the applicants accuse it of having infringed their national trade marks, the Commission points out that although the applicants list the trade marks allegedly concerned by the present dispute — 204 trade marks in various countries, 24 of which are registered in Member States of the Community — they do not give any details of the national provisions which have allegedly been infringed. Without such details, the Commission maintains, it could not be expected to engage in conjecture as to which national provisions had allegedly been infringed.
- 30 As for their Community trade marks, the applicants have not indicated why the Community was liable for the infringement of one or other of them. In particular, the applicants have not pleaded the specific provisions of Article 9(1)(b) of Regulation No 40/94.
- 31 Nor have the applicants explained how their company, trade or domain names are affected. Indeed, since they rely only on Article 8 of the Paris Convention, the applicants have omitted to refer to the relevant national legislation transposing that convention and thus to explain why the Community is bound by that treaty, to which it is not a party.
- 32 Lastly, the Commission pleads the inadmissibility of the claims that the Court should grant injunctions. In fact, the EC Treaty does not give the Community Courts the power to do so.
- 33 The applicants counter that the absence of a precise reference to the national laws has not prevented the Commission from understanding the subject-matter of the action or adequately preparing its defence.

- 34 As for Article 8 of the Paris Convention, the applicants state that that provision establishes the principle of protection of trade names, which is binding on all the Member States. By breaching that principle, the Commission has acted unlawfully.
- 35 As far as concerns the claims that the Court should prohibit the Commission from using the word 'Galileo', the applicants submit that those claims do not entail the slightest interference in one of the Commission's areas of political or administrative competence. It is simply a matter of bringing to an end conduct that is wrongful, and preventing an increase in the damage suffered.

Findings of the Court

Requirement of clarity and precision in the application

- 36 Under the first paragraph of Article 21 and the first paragraph of Article 53 of the Statute of the Court of Justice, as well as under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, all applications must contain a statement of the subject-matter of the proceedings and a summary of the pleas relied on. Those details must be sufficiently clear to enable the defendant to prepare its defence and the Court to rule on the application, if necessary without any further information. In order to guarantee legal certainty and the sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be stated, at least in summary form, coherently and intelligibly in the application itself (Case T-113/96 *Dubois et Fils v Council and Commission* [1998] ECR II-125, paragraph 29, and Case T-195/00 *Travelex Global and Financial Services and Interpayment Services v Commission* [2003] ECR II-1677, paragraph 26).

37 In order to satisfy those requirements, an application seeking compensation for damage allegedly caused by a Community institution must set out the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered and the nature and extent of that damage (*Travellex Global and Financial Services and Interpayment Services v Commission*, cited in paragraph 36 above, paragraph 27).

— National, Community and non-Community trade marks

38 As regards the complaints relating to an infringement of national trade marks, it is apparent from the application that the applicants seek to render the Community liable in order to obtain compensation for the alleged damage, namely the loss of the essential function and value of their national trade marks. That damage allegedly suffered as a result of the use of the Galileo sign is, according to the applicants, attributable to the Commission, which caused the alleged damage by, inter alia, failing to respect the trade mark rights as defined in Article 5(1)(b) of the Directive.

39 Under Article 5(1)(b) of the Directive, a registered trade mark confers on the proprietor the right ‘to prevent all third parties not having his consent from using in the course of trade ... any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trade mark’.

40 The reference in the application to Article 5(1)(b) of the Directive must be regarded as sufficiently clear and precise so far as the 24 trade marks registered in the Member States of the Community are concerned. Indeed, Article 5(1)(b) of the

Directive harmonises the rules within the Community relating to the rights conferred by a trade mark and defines the exclusive rights of trade mark proprietors in the Community (Case C-355/96 *Silhouette International Schmied* [1998] ECR I-4799, paragraph 25, and Case C-206/01 *Arsenal Football Club* [2002] ECR I-10273, paragraph 43). The Member States of the Community were obliged to transpose that provision into national law and the Commission has not denied that that transposition was effected in full in relation to the 24 trade marks covered by the Directive.

- 41 Consequently, these complaints cannot be held to be inadmissible on the grounds that the applicants failed to supply details of the national legislation allegedly contravened. The Commission's plea of inadmissibility must, therefore, be dismissed in that regard.
- 42 By contrast, as far as the 178 trade marks registered in non-member countries are concerned, the applicants' reference to the Directive is unlikely to remedy the lack of precision as to the nature and scope of the trade mark rights said to have been conferred by the non-Community laws in question. Given the applicants' silence in that regard, it is not possible for the defendant to prepare its defence or for the Court to rule on the application in so far as the applicants claim that the alleged damage was caused by an infringement of those trade mark rights.
- 43 Consequently, the application must be held to be inadmissible as regards the complaint relating to an infringement of those rights. Furthermore, in response to a written question of the Court, the applicants admitted that they could not rely on the rights conferred by the trade marks registered in non-member countries.

— Trade marks of repute

⁴⁴ In paragraph 40 of their reply, the applicants describe the renown of their trade marks. In so far as they seek to rely ultimately on Article 5(2) and (5) of the Directive, it is sufficient to point out that that provision is limited to allowing Member States to provide for greater protection of trade marks of repute where there is no similarity of the goods or services concerned as well as against the use of a sign other than for the purpose of distinguishing goods or services. As it is, the applicants have failed to make clear in the application the particular reputation of their trade marks and the methods of protection conferred by any of the national legislation concerned.

⁴⁵ Whilst it is therefore possible that the reputation of their trade marks was affected by the Commission's conduct, the fact remains that the applicants have failed to put forward a plea which satisfies the requirements of precision referred to above. The action must therefore be held to be inadmissible as regards the complaint relating to breach of Article 5(2) and (5) of the Directive.

— Community trade marks

⁴⁶ It should be noted that the applicants referred in their application to their 'Community trade marks and applications for registration of Community trade marks', of which there are five, and pleaded an 'infringement of the trade mark rights of Galileo International Technology and of the rights arising from its applications for Community trade marks'. In addition, the note at the bottom of page 57 refers expressly to 'Regulation ... No 40/94'.

- 47 Although the application does not expressly refer to Article 9(1)(b) of Regulation No 40/94, it thus invokes, at least implicitly, the rights conferred by that provision. Furthermore, it is settled case-law that a mistake made in designating the relevant provision cannot lead to the inadmissibility of the submission put forward, where the purpose and the summary of the complaint appear sufficiently clearly from the application (Case 12/68 *X v Audit Board of the European Communities* [1969] ECR 109, paragraphs 6 and 7, and Case T-171/99 *Corus UK v Commission* [2001] ECR II-2967, paragraph 36). It must be concluded from this that an applicant also is not obliged expressly to state on which particular rule of law his complaint is based, provided that his line of argument is sufficiently clear for the opposing party and the Community Courts to be able to identify the rule without difficulty.
- 48 Article 9(1)(b) of Regulation No 40/94 confers on the proprietor of a Community trade mark identical rights to those which Article 5(1)(b) of the Directive confers on the proprietor of a national trade mark. The latter provision was referred to repeatedly in the application. Moreover, the Commission has made no mistake as regards the Community part of the complaints put forward by the applicants, since it refers expressly to Article 9 of Regulation No 40/94 in paragraph 50 of its defence.
- 49 It follows that the applicants' reliance on Article 9(1)(b) of Regulation No 40/94 satisfies the requirements of precision mentioned above and must, therefore, be held to be admissible.

— Company names, trade names and domain names

- 50 According to the applicants, the protection of their company names is indissociable from that of their trade names, whereas their domain names constitute a particular application of their trade names. On being questioned as to the meaning of that

statement, they explained that Article 8 of the Paris Convention relates only to the protection of trade names and that company names are protected by other national legal rules. They added that, by their action, they sought to emphasise that while Article 8 protects only trade names in the strict sense, the rights over their company names are also affected.

51 As regards the complaints that their company and domain names are affected, it must be noted that the applicants have not submitted any evidence beyond those assertions. In particular, they were entirely silent as to the national legal rules allegedly contravened and as to the general principles common to the laws of Member States on the basis of which the Community should pay compensation under the second paragraph of Article 288 EC for the damage claimed. Those complaints do not satisfy the requirements of precision mentioned above and must, therefore, be held to be inadmissible.

52 As regards the applicants' reliance on their trade names within the meaning of Article 8 of the Paris Convention, it is true that a trade name is an intellectual property right which the members of the World Trade Organisation (WTO) are obliged by Article 8 to protect by virtue of the Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPs Agreement') (Case C-245/02 *Anheuser-Busch* [2004] ECR I-10989, paragraphs 91 to 96).

53 However, although WTO members, including the Member States of the Community, are required to implement that protection of trade names, the fact remains that Article 8 of the Paris Convention merely states that '[a] trade name shall be protected in all the countries [to which the Convention applies] without the obligation of filing or registration, whether or not it forms part of a trade mark'.

- 54 Far from defining the extent and terms of protection conferred on trade names, that provision merely sets out the requirement to implement that protection. It cannot therefore be regarded as harmonising the legislation relating to the rights conferred by trade names.
- 55 In fact, contrary to Article 5 of the Directive, which precisely defines ‘the rights conferred by a trade mark’ (which is why that article can legitimately be relied on in place of the reference to the relevant national laws of the Member States — see paragraph 40 above), the broad wording of Article 8 of the Paris Convention enables the various national legislatures to set up a variety of protection systems laying down, inter alia, conditions relating to minimum use or minimum awareness of the trade name (see, to that effect, *Anheuser-Busch*, cited in paragraph 52 above, paragraph 97).
- 56 On being questioned by the Court about the protection conferred by Article 8 of the Paris Convention, the applicants did not refer to any specific national legislation giving them adequate protection for their trade names and capable of being infringed by the Commission.
- 57 Consequently, although the relevant national rules for the protection of rights in a field to which the TRIPs Agreement applies must be applied in the light of the wording and purpose of the provisions of that agreement (*Anheuser-Busch*, cited in paragraph 52 above, paragraph 55), the applicants cannot reasonably invoke that obligation in the present context, given that they have failed to plead or identify such national rules.
- 58 Moreover, as the provisions of the TRIPs Agreement do not have direct effect, they cannot as such create rights upon which the applicants could rely directly before the Community Courts (see, to that effect, *Anheuser-Busch*, cited in paragraph 52 above, paragraph 54) irrespective of any national rules that may exist.

59 It follows that the complaint relating to an infringement of Article 8 of the Paris Convention must also be held to be inadmissible.

Application for an injunction to stop the alleged wrongful actions of the Commission

60 In so far as the applicants are applying for the Commission to be prohibited from using the word 'Galileo' in connection with the satellite radio navigation system project, the Commission refers to settled case-law according to which the Community Courts cannot make such orders against a Community institution, even in compensation proceedings, without encroaching on the rights and powers of the administrative authorities (Case C-63/89 *Assurances du crédit v Council and Commission* [1991] ECR I-1799, paragraph 30; Case T-156/89 *Valverde Mordt v Court of Justice* [1991] ECR II-407, paragraph 150; orders of the Court of First Instance in Case T-71/99 *Meyer v Commission* [1999] ECR II-1727, paragraph 13, and in Case T-202/02 *Makedoniko Metro and Michaniki v Commission* [2004] ECR II-181, paragraph 53).

61 The Commission adds that the second paragraph of Article 288 EC permits compensation only in respect of past damage and does not confer any right to issue injunctions aimed at preventing future unlawfulness. Forbidding the use of a name cannot be regarded as compensation in kind. Such a prohibition would certainly prevent a continuation of the alleged damage, but would not have the effect of making good the damage already suffered.

62 In that regard, it must be noted that, under the second paragraph of Article 288 EC, '[i]n the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties'. That provision covers the conditions of non-contractual liability as well as

the detailed rules and scope of the right to compensation. Furthermore, Article 235 EC gives the Court of Justice 'jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 288'.

- 63 It follows from those two provisions — which, contrary to the first paragraph of Article 40 of the former ECSC Treaty, which envisaged only monetary compensation, do not preclude the grant of compensation in kind — that the Community Courts have the power to impose on the Community any form of reparation that accords with the general principles of non-contractual liability common to the laws of the Member States, including, if it accords with those principles, compensation in kind, if necessary in the form of an injunction to do or not to do something.
- 64 In relation to trade marks, the aim of the Directive is for registered national trade marks to have the same protection in all the Member States. Under Article 5(1) of the Directive, the proprietor of such a mark is entitled 'to prevent all third parties' from using it. As stated above (paragraph 40), that provision harmonises the rules within the Community relating to the rights conferred by a trade mark.
- 65 It follows that the uniform protection conferred on the proprietor of a national trade mark registered in a Member State falls within the general principles common to the laws of the Member States, as referred to in the second paragraph of Article 288 EC.
- 66 That finding is confirmed by Regulation No 40/94 which provides, in Article 98(1), that where Community trade mark courts find that the defendant has infringed or threatened to infringe a Community trade mark they are to issue an order 'prohibiting the defendant from proceeding with the acts which infringed [the trade mark]' and take such measures as are aimed at ensuring that the prohibition is complied with. In accordance with the second paragraph of Article 249 EC, that regulation is binding in all its aspects and directly applicable in the Member States.

- 67 Although the uniform protection of proprietors of trade marks has been implemented in the Member States by the procedural measure whereby competent national courts are able to deliver judgments prohibiting the defendant from infringing the trade mark right claimed, the Community cannot, on principle, be excluded from a corresponding procedural measure on the part of the Community Courts, as they have exclusive jurisdiction to hear actions seeking compensation for damage attributable to the Community (*Travelex Global and Financial Services and Interpayment Services v Commission*, cited in paragraph 36 above, paragraph 89).
- 68 Nor can the Community evade the protection regime referred to above given that the Community institutions are obliged to comply with the entire body of Community law, which includes secondary law. Thus, the Commission must comply with the provisions of the Directive and Regulation No 40/94 which were adopted by the Council on a proposal from the Commission (see, to that effect, *Travelex Global and Financial Services and Interpayment Services v Commission*, cited in paragraph 36 above, paragraphs 85 and 86, and the case-law cited).
- 69 In so far as the Commission disputes that the prohibition in question could make good the damage alleged, it must be recalled that the applicants claim to be suffering as a result of the permanent and repeated unlawful use of the Galileo sign, which infringes their trade mark rights. The specific subject-matter of a trade mark is in particular to guarantee to the owner that he has the exclusive right to use that mark for the purpose of putting a product on the market for the first time and thus to protect him against competitors wishing to take unfair advantage of the status and reputation of the trade mark by selling products illegally bearing it (see Case C-349/95 *Loendersloot* [1997] ECR I-6227, paragraph 22, and the case-law cited).
- 70 It follows that infringement of the right to exclusive use of a trade mark necessarily means that the mark is weakened and damage thereby caused to the proprietor.

- 71 For the damage thus caused to be fully compensated, the right of the proprietor of the mark must be re-established intact which, irrespective of any damages to be assessed, requires at the very least the immediate cessation of the infringement of his right. It is precisely by means of the injunction applied for in the present case that the applicants are seeking to ensure that the Commission's alleged infringement of the applicants' trade mark rights should cease.
- 72 Furthermore, the Commission itself stated, in response to a question of the Court, that it was inconceivable that if it were ordered to pay damages it would disregard that decision by continuing with actions which the Court had declared to be unlawful. Thus the Commission admits that it is *de facto* bound, in terms of being forbidden to act, by a decision of the Community Courts establishing its liability. Such a decision is tantamount to an implied injunction against the Commission.
- 73 Consequently, the claim for the Commission to be prohibited from using the word 'Galileo' in connection with the satellite radio navigation system project must be held to be admissible. The Commission's plea as to the inadmissibility of that claim cannot therefore be upheld.

Conclusion

- 74 It follows from the foregoing that the claims made in the action are admissible in their entirety. The same applies to the complaints relating to the infringement of the rights conferred on the applicants by Article 5(1)(b) of the Directive and by Article 9(1)(b) of Regulation No 40/94 as regards their national trade marks within the Community and their Community trade marks.

2. *Merits*

75 The applicants' action is based, primarily, on the principle of the Commission's liability for an unlawful act and, in the alternative, on the principle of its liability for a lawful act.

The Commission's liability on account of an unlawful act

Preliminary observations

76 It must be recalled that it is settled case-law that the Community's non-contractual liability under the second paragraph of Article 288 EC for unlawful conduct by its institutions is dependent on the coincidence of a series of conditions: the unlawfulness of the conduct alleged against the institutions, the fact of damage and the existence of a causal link between the conduct alleged and the damage complained of (Case 26/81 *Oleifici Mediterranei v EEC* [1982] ECR 3057, paragraph 16; Case T-175/94 *International Procurement Services v Commission* [1996] ECR II-729, paragraph 44; Case T-336/94 *Efisol v Commission* [1996] ECR II-1343, paragraph 30; and Case T-267/94 *Oleifici Italiani v Commission* [1997] ECR II-1239, paragraph 20).

77 Where one of those conditions is not satisfied, the application must be dismissed in its entirety without it being necessary to examine the other preconditions (Case C-146/91 *KYDEP v Council and Commission* [1994] ECR I-4199, paragraphs 19 and 81, and Case T-170/00 *Förde-Reederei v Council and Commission* [2002] ECR II-515, paragraph 37).

- 78 The unlawful conduct alleged against a Community institution must consist in a sufficiently serious breach of a rule of law intended to confer rights on individuals (Case C-352/98 P *Bergaderm and Goupil v Commission* [2000] ECR I-5291, paragraph 42).
- 79 The decisive test for finding that that requirement is fulfilled is whether the Community institution concerned manifestly and gravely disregarded the limits on its discretion.
- 80 Where that institution has only a considerably reduced discretion, or even no discretion at all, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach (Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrika and Dole Fresh Fruit Europe v Commission* [2001] ECR II-1975, paragraph 134, and Joined Cases T-64/01 and T-65/01 *Afrikanische Frucht-Compagnie and Internationale Fruchtimport Gesellschaft Weichert v Council and Commission* [2004] ECR II-521, paragraph 71).
- 81 The various pleas and arguments put forward by the applicants in the present case must be considered with the benefit of those observations.

Arguments of the parties

- 82 By their first complaint, the applicants submit that the Commission's wrongful conduct, which generated the damage suffered, lies in the infringement of the applicants' trade mark rights under Article 5(1)(b) of the Directive. By using the word 'Galileo' and encouraging third parties to use it without obtaining the

applicants' consent, the Commission infringed, and continues to infringe, their trade mark rights. In addition, the applicants refer to their Community trade mark rights under Article 9(1)(b) of Regulation No 40/94.

83 In that connection, they explain that the word 'Galileo' used by the Commission is substantially similar to their trade marks. The distinctive character of those marks has therefore been considerably affected by the Commission's conduct.

84 The applicants emphasise also the similarity between the goods and services that they offer and those involved in the Commission's Galileo project, the target customers of the two parties being largely identical.

85 The applicants offer services which are aimed at the air, maritime and land transport sectors, the hotel sector and the ultimate consumers. Those services enable information to be obtained about the real-time position of aeroplanes in flight, scheduled flight timetables as well as reservation options. The applicants also offer products in conjunction with those services, particularly computer programs.

86 As for the Galileo navigation project, it is geared towards potential users, namely service providers, manufacturers and their clients in the long-distance rail or air transport sectors and in the maritime sector. The main service offered by that project is the real-time location of one of those means of transport.

- 87 That main service is identical to the services offered by the applicants which make it possible to pinpoint the exact geographic location of a flight. The similarity extends to the goods, as the Galileo project involves the development of specific software and computers to interpret, utilise and distribute the information to consumers.
- 88 According to the applicants, there is a likelihood of confusion on the part of the relevant public between the applicants' trade marks and the word 'Galileo' used by the Commission. Indeed, the Commission itself emphasised the huge significance of the European Galileo project: it is envisaged that around 140 000 jobs will be created and the market for the equipment and services is estimated at more than EUR 9 billion a year from 2010. The applicants take the view that those developments will inevitably involve the increasing use of the word 'Galileo' in all the technologies upon which the project will call.
- 89 Furthermore, according to the applicants, the Commission's intended use of the word 'Galileo' is 'in the course of trade', as that word has been used in conjunction with all of the services which the Galileo project is intended to provide.
- 90 The applicants state that the Commission and the Council have stressed that the Galileo project is based on a partnership with the private sector and that it has a commercial objective intended to guarantee the project's economic viability. Thus, a consortium of 65 undertakings is currently working on the technical aspects of the project and numerous industrial and banking groups are already preparing for future participation. During all its operational phases, the Galileo project has thus represented important economic stakes for the private sector.
- 91 The Commission has already created the 'Galileo Joint Undertaking' in collaboration with the ESA (see paragraph 10 above), which is tasked with implementing the

development and validation phases as well as preparation of the deployment and operational phases of the Galileo programme. In addition, on 22 May 2003 the Commission published a call for tenders worth EUR 500 000 in particular to study the integration of the Galileo project with existing navigation systems.

- 92 Furthermore, the fact that the Commission had applied to register a Community trade mark (see paragraph 14 above) makes sense only if it plans to use the mark to distinguish its products or services.
- 93 According to the applicants, the Commission has encouraged major European industrial groups to use the word 'Galileo' as a trade mark in the course of trade, such as the company, Galileo Industries, against which an action was brought in the Brussels Commercial Court (see paragraph 19 above) and which had referred to the Commission's choice of the word 'Galileo'. The partners for whom the Joint Undertaking is intended were, in turn, necessarily required to use the same word, a use which also should be attributed to the Commission.
- 94 By their second complaint, the applicants accuse the Commission of having caused them damage by failing to make inquiries about the marks. Anyone planning to use a new trade mark faces the risk that a third party may already have obtained exclusive rights to an identical or similar sign. The applicants submit that if the Commission had undertaken such an inquiry it would have known about their trade mark rights and could easily have chosen a different word to designate its project. In any event, the Commission had made a serious error by continuing to use the word 'Galileo' when subsequently informed of the applicants' trade mark rights.

- 95 The Commission counters that the sign of the Galileo research programme and the trade marks referred to by the applicants are not similar, as the essential and distinctive element of their trade marks is a stylised sphere. As regards in particular its application for registration of a Community trade mark, this related to a very specific sign (see paragraph 14 above) which does not create any likelihood of confusion with the trade marks upon which the applicants rely.
- 96 Furthermore, that trade mark application referred to research and development services limited to the field of satellite radio navigation. It was made purely as a protective measure to avoid the risk of a private undertaking appropriating that word and taking advantage of its reputation without any justification.
- 97 Moreover, the trade marks relied on by the applicants were not aimed at the general public. The applicants use it solely in the context of transactions concluded with a limited group of professionals. Consequently, their trade marks are not familiar to consumers and end-users.
- 98 For the same reason, there is no likelihood of the general public confusing the trade marks referred to and the word 'Galileo' used by the European project. The professionals at whom the applicants' activities are aimed are much more discriminating than the average consumer and have no difficulty recognising the word 'Galileo' as designating the European research project and distinguishing it from the applicants' trade marks.
- 99 The Commission adds that it used the word 'Galileo' solely as a synonym for the title of the European satellite navigation project. That use was never intended to promote a service or product arising from the technical results obtained within the context of the project.

- 100 As to the ‘Galileo Joint Undertaking’, it exists only to see the research and development phases of the Galileo programme through, and does not carry out any commercial activity. It is limited to managing the call for tenders and to selecting the future concession-holder of the system.
- 101 The Commission denies having encouraged third parties to use the word ‘Galileo’ for goods and services in the course of trade. There is in particular no link with the company Galileo Industries. Specifically it did not encourage that company to use the word ‘Galileo’ as a trade mark.
- 102 As regards the second complaint put forward by the applicants, the Commission denies that it was under a legal obligation to make inquiries about the trade marks. The fact that inquiries were not made about the trade marks is not in itself wrongful.

Findings of the Court

— First complaint, alleging infringement of the applicants’ trade mark rights

- 103 As regards the complaint alleging the Commission’s infringement of the applicants’ rights in respect of the trade marks owned by them, it should be noted that Article 5(1)(b) of the Directive and Article 9(1)(b) of Regulation No 40/94 lay down rules which are intended to confer rights on them. In fact, those provisions confer on the applicants, as proprietors of trade marks protected by the Directive and by Regulation No 40/94, the exclusive right, subject to certain conditions, to prevent any third party from using a sign that is similar or identical to their trade marks.

- 104 As to whether those provisions and the right thereby conferred on the applicants were the subject of a sufficiently serious breach by the Commission, it must be noted that such a breach presupposes that all the conditions for the application of those provisions have been satisfied in the present case.
- 105 In that regard, it must be recalled, first of all, that one of those conditions makes the protection of the proprietor of the mark dependent on there being a likelihood of confusion as a result, *inter alia*, of the identity or similarity of the products or services covered by the mark and the sign in question.
- 106 The Commission could therefore have infringed Article 5(1)(b) of the Directive and Article 9(1)(b) of Regulation No 40/94 only if the applicants established that it used the word 'Galileo' to designate products or services similar or identical to the products and services covered by the trade marks held by the applicants.
- 107 Although the applicants have succeeded in demonstrating that they themselves offer numerous services and products under cover of their trade marks which include the word 'Galileo', the same cannot be said as regards the use of that word by the Commission.
- 108 In particular, the applicants have not established that the Commission itself offers products or services in connection with its Galileo project.
- 109 In their pleadings, they confined themselves to arguing that the Commission's Galileo project was geared towards potential users, that it involved the development of specific software, that it was intended to supply services and that the Commission, by its application for a Community trade mark, planned to use that mark to distinguish products or services.

- 110 In response to a written question from the Court, the applicants expressly admitted that there were not yet any products or services arising from the technical results obtained through the Commission's Galileo project and that such products and services were therefore not yet available to prospective public or private users of the satellite radio navigation system.
- 111 It must be recalled, secondly, that the protection of proprietors of trade marks provided for in Article 5(1)(b) of the Directive and Article 9(1)(b) of Regulation No 40/94 is subject also to the use of the sign in question by a third party being capable of being described as 'us[e] in the course of trade'.
- 112 Thus, proprietors of trade marks are protected only if the use of the sign in question is liable to affect the functions of the trade mark, in particular its essential function of guaranteeing to consumers the origin of the goods or services. That is the case, in particular, where the use of that sign allegedly made by the third party is such as to create the impression that there is a material link in trade between the third party's goods or services and the undertaking from which those goods or services originate. It must be established whether the consumers targeted are likely to interpret the sign, as it is used by the third party, as tending to designate the undertaking from which the third party's goods or services originate (see, to that effect, *Anheuser-Busch*, cited in paragraph 52 above, paragraphs 59 and 60).
- 113 In the present case, those criteria are not satisfied. As the file shows, the Commission has, until now, used the word 'Galileo' only to designate its satellite radio navigation project generally, albeit while emphasising the many advantages to users of its future operations (see paragraph 12 above), but without establishing a material link between, on the one hand, certain products and services arising from the research, development and deployment phases of the project and, on the other hand, the products and services offered by the applicants. As for radio navigation products and services in the strict sense, it is common ground that at the current stage of the project there are, as yet, none (see paragraph 110 above).

- 114 In that connection, it must be particularly noted that the use of a sign occurs ‘in the course of trade’ where it takes place in the context of commercial activity with a view to economic advantage (see *Travelex Global and Financial Services and Interpayment Services v Commission*, cited in paragraph 36 above, paragraph 93, and the case-law cited).
- 115 In that regard, the Commission does indeed emphasise the commercial objective of its project. It is doing all it can to ensure that the project is operational and that satellite radio navigation services can indeed be provided in accordance with the planned timetable, as the project’s whole purpose is its economic operation.
- 116 Nevertheless, the role of the Commission is limited to launching its satellite radio navigation project as the ‘European response’ to the American GPS and Russian Glonass systems, to providing financial support for the project’s research, development and deployment phases, as well as to establishing the appropriate framework for the subsequent economic operational phase, in particular, through participation in the creation of the ‘Galileo Joint Undertaking’ and the publication of a call for tenders with a view to integrating the Galileo project with existing navigation systems.
- 117 In doing so, the Commission is not undertaking an economic activity since it is not offering goods or services on the market. By using the word ‘Galileo’ in the context of the research, development and deployment phases of the project, which precede the economic operational phase proper, the Commission is not seeking to obtain an economic advantage over other operators, given that there are no operators in competition with it in that field. Contrary to the proposition defended by the applicants, it is not, therefore, artificial to make a distinction in the present context between the Galileo project’s economic operational phase and the earlier phases.

- 118 It follows that the applicants have failed also to establish that the Commission's use of the word 'Galileo' was liable to affect the functions of the trade marks referred to or that it took place 'in the course of trade' within the meaning of Article 5(1)(b) of the Directive and Article 9(1)(b) of Regulation No 40/94.
- 119 That conclusion is not undermined by the fact that the Commission filed an application with OHIM for a Community trade mark for its Galileo project concerning 'research/development services in the field of satellite radio navigation', and that it lodged the project's emblem with the WIPO (see paragraphs 14 and 16 above).
- 120 Indeed, while such actions may be indicative of an intention to carry out an activity in the course of trade, that is not so in the particular circumstances of this case, provided that the Commission's conduct does not go beyond the parameters of the role which it has until now assigned itself in relation to its satellite radio navigation project and in the use of the word 'Galileo' (see paragraphs 113, 116 and 117 above).
- 121 In so far as the applicants object to the fact that the Commission will, in all likelihood, use its prospective Community trade mark for the benefit of undertakings licensed in respect of the satellite radio navigation system, by transferring the trade mark or granting licences, that assertion must, currently, be treated as mere speculation which has no more weight than the contrary assertion by the Commission that the trade mark application was filed as a purely protective measure in order to avoid the risk of a private undertaking appropriating the word 'Galileo' and taking advantage of it without any justification.
- 122 In fact, the applicants are simply expressing their fear that the Commission will ensure that private undertakings benefit from its Community trade mark once it has been registered by OHIM. That registration has not yet taken place, so the

Commission cannot currently use the trade mark. The applicants have lodged an appeal before OHIM opposing the registration (see paragraph 15 above), and that appeal has a suspensive effect under Article 57(1) of Regulation No 40/94. Given the legal remedies available against the forthcoming decision of the competent Board of Appeal of OHIM, it is not possible to determine whether the trade mark application filed by the Commission will ultimately be approved.

123 Concerning compensation, the Community Courts are authorised to order a defendant institution to pay a fixed sum of money or to declare it liable, even if the damage cannot yet be precisely assessed, provided that the damage is imminent and foreseeable with sufficient certainty. In that way, the matter can be brought before the Court as soon as the cause of damage is certain in order to prevent even greater damage (Joined Cases 56/74 to 60/74 *Kampffmeyer and Others v Commission and Council* [1976] ECR 711, paragraph 6, and Case 281/84 *Zuckerfabrik Bedburg v Council and Commission* [1987] ECR 49, paragraph 14).

124 Clearly it must be noted, however, that although that case-law allows the Court to uphold an action for damages even if the damage has not been assessed, it does not authorise the Court to give judgment against the defendant institution without first having found that institution to have actually committed a sufficiently serious breach of a rule of law intended to confer rights on the applicant.

125 In the present case, in order for judgment to be given against the Commission under the second paragraph of Article 288 EC, it is not sufficient therefore for the applicants to claim that there is merely a risk of a future breach by that institution of the rights conferred on them by Article 5(1)(b) of the Directive and Article 9(1)(b) of Regulation No 40/94 if the Commission were to use the word 'Galileo' in the course of trade in connection with the services or products covered by the applicants' trade marks. The applicants have in particular failed to establish that the Commission's present use of the word 'Galileo' to designate its project necessarily means that their rights will be infringed in the future.

- 126 It follows that the Commission's own use of the word 'Galileo' to designate its satellite radio navigation project does not satisfy all the conditions required in order for Article 5(1)(b) of the Directive and Article 9(1)(b) of Regulation No 40/94 to apply.
- 127 Consequently, the Commission has not by that conduct infringed the rights conferred on the applicants by the provisions of Article 5(1)(b) of the Directive and Article 9(1)(b) of Regulation No 40/94.
- 128 The applicants further submit that the Commission has incited and encouraged private undertakings with an interest in the operation of the project to use, until now, the word 'Galileo' for commercial purposes, that is to say in connection with goods and services. In that regard, they refer back to the 10 or so disputes between the applicants and those undertakings before the national courts and OHIM (see paragraphs 19 to 21 above). According to the applicants, those undertakings are necessarily obliged to use that word in the course of trade to make the connection between their activities and the project launched by the Commission. Consequently, the use of the word 'Galileo' by the private sector should be attributed to the Commission.
- 129 In that regard, it must be recalled that only acts or conduct attributable to an institution or to a Community body can give rise to the non-contractual liability of the Community (see, to that effect, Case 118/83 *CMC and Others v Commission* [1985] ECR 2325, paragraph 31, and Case C-234/02 P *Ombudsman v Lamberts* [2004] ECR I-2803, paragraph 59).
- 130 According to settled case-law, the alleged harm must be a sufficiently direct consequence of the conduct complained of, that is to say the conduct must be the determining cause of the harm (see the order of the Court of First Instance in Case T-201/99 *Royal Olympic Cruises and Others v Council and Commission* [2000] ECR II-4005, paragraph 26, and the case-law cited, upheld on appeal by order of the

Court of Justice of 15 January 2002 in Case C-49/01 P *Royal Olympic Cruises and Others v Council and Commission* (not published in the ECR)). By contrast, it is not for the Community to make good every harmful consequence, even a remote one, of the conduct of its institutions (see, to that effect, Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier frères and Others v Council* [1979] ECR 3091, paragraph 21).

131 In the present case, admittedly, the Commission took the word ‘Galileo’ to designate the European satellite radio navigation project. It is also true that the Commission must have been aware that undertakings wishing to operate that project economically would be tempted to use the same word in order to take advantage of the reputation of the Commission as much as of the project.

132 Nevertheless, the fact remains that the undertakings’ use of the word in question in connection with their economic activities is based on a choice which they made independently.

133 First, the applicants have failed to establish that the Commission put those undertakings under an obligation to use that word or that it actively colluded with them by encouraging them to do so. Secondly, they have not even asserted that there were organisational or functional links between the undertakings concerned and the Commission, or that the latter exercised control by interfering directly or indirectly in their management. Lastly, there is nothing to support the assumption that the Commission’s initial choice of the word ‘Galileo’ necessarily incited the undertakings interested to follow its example or else compromise the economic success of the whole project.

134 Since the undertakings are deemed to know Community law and trade mark law, it seems appropriate therefore to take the view that they must be regarded as responsible, under the relevant legal provisions, for their own conduct on the market, in so far as they chose to use the term ‘Galileo’ in the context of their economic activities.

135 It follows that the choice made by the undertakings must be regarded as the direct and determining cause of the alleged damage, since the Commission's possible contribution to that damage is too remote for the relevant undertakings' liability to fall back on to the Commission.

136 Consequently, the complaint alleging infringement of the applicants' trade mark rights must be dismissed.

— Second complaint, alleging negligent conduct towards the applicants on the part of the Commission

137 As regards the complaint alleging wrongful failure by the Commission to make inquiries about the trade marks, it is sufficient to note that omissions by the Community institutions can give rise to liability on the part of the Community only where the institutions have infringed a legal obligation to act under a provision of Community law (see *Travelex Global and Financial Services and Interpayment Services v Commission*, cited in paragraph 36 above, paragraph 143, and the case-law cited).

138 In the present case, the applicants did not state under which provision of Community law the Commission was obliged to make inquiries about earlier registrations of the word 'Galileo' as a trade mark. Furthermore, as the Commission's use of that word to designate its satellite radio navigation project has not infringed the applicants' trade mark rights, the Commission's failure to make inquiries about those marks before using the word cannot be described as wrongful.

139 It follows that the applicants have failed to establish the unlawfulness of the conduct alleged against the Commission in that respect.

140 Consequently, the complaint alleging negligent conduct towards the applicants on the part of the Commission must also be dismissed.

— Conclusion

141 As neither the unlawfulness of the conduct alleged against the Commission nor the existence of a sufficiently direct causal link between the conduct complained of and the damage relied on could be established, the conditions for the Community's non-contractual liability to arise have not been satisfied.

142 Accordingly, the applicants' action for compensation on the basis of that liability scheme must be dismissed.

The Commission's liability on account of a lawful act

143 The applicants refer to the Commission's liability for lawful acts. In the present case, the use of the word 'Galileo' had affected and would affect their rights in a completely unique way because they are the only undertakings whose rights have been affected by the measure in question (unusual damage). Furthermore, the likelihood of a public authority disregarding trade mark law by using a word for a project, when that breach could easily have been avoided, is not at all inherent in the

fact of operating in a particular economic sector (special damage). Lastly, the Commission's rash choice of the word 'Galileo' is not justified by any general economic interest (lack of justification).

- ¹⁴⁴ In that regard, it must be noted that where, as in the present case, the unlawfulness of the conduct attributed to the Community institutions is not established, it does not mean that undertakings which consider themselves prejudiced by that conduct cannot under any circumstances obtain compensation by invoking the Community's non-contractual liability (see, to that effect, Case 81/86 *De Boer Buizen v Council and Commission* [1987] ECR 3677, paragraph 17).
- ¹⁴⁵ Under the second paragraph of Article 288 EC, the obligation imposed on the Community to make good damage caused by its institutions is based on the 'general principles common to the laws of the Member States'; it does not follow from that provision that the scope of those principles is restricted solely to the scheme that governs the Community's non-contractual liability for the unlawful conduct of those institutions.
- ¹⁴⁶ National laws on non-contractual liability allow individuals, albeit to varying degrees, in particular fields and according to different rules, to obtain compensation for certain damage in court, even in the absence of unlawful action by the party liable for the damage.
- ¹⁴⁷ In the event of damage caused by the Community institutions' conduct, the unlawfulness of which has not been demonstrated, the Community may incur non-contractual liability as soon as the conditions relating to the reality of the damage, the causal link between it and the conduct on the part of the Community institutions, and the unusual and special nature of that damage are all fulfilled (Case

C-237/98 P *Dorsch Consult v Council and Commission* [2000] ECR I-4549, paragraph 19).

¹⁴⁸ As regards the damage which may be suffered by economic operators on account of the Community institutions, it is unusual where it exceeds the limits of the economic risks inherent in operating in the sector concerned (*Afrikanische Frucht-Compagnie and Internationale Fruchtimport Gesellschaft Weichert v Council and Commission*, cited in paragraph 80 above, paragraph 151, and the case-law cited).

¹⁴⁹ In the present case, even if the applicants had been able to demonstrate that they suffered real damage which was caused by the Commission's use of the word 'Galileo', that damage could not be regarded as exceeding the limits of the risks inherent in the use by the applicants of the same term in respect of their trade marks.

¹⁵⁰ By choosing the name 'Galileo' to designate their trade marks, products and services, the applicants could not deny that they were inspired by the first name of the renowned Italian mathematician, physicist and astronomer, born in Pisa in 1564, who is one of the great names in European culture and scientific history. Thus, the applicants voluntarily exposed themselves to the risk that someone else (in this case, the Commission) could legally — that is to say, without infringing their trade mark rights — give the same famous name to their satellite radio navigation research programme. Furthermore, in 1989, the National Aeronautics and Space Administration (NASA) had already chosen the word 'Galileo' to designate a space mission, namely the launch of an observation satellite to the planet Jupiter.

¹⁵¹ It is not appropriate, therefore, in the circumstances of this case, to describe the damage allegedly suffered by the applicants as unusual.

152 That statement is sufficient to preclude any right to compensation in that respect, without there being any need for the Court to rule on the condition that the damage alleged should be special.

153 It follows that the applicants' claim for damages, based on the Community's scheme for non-contractual liability in the absence of unlawful conduct on the part of its institutions, cannot be upheld either.

154 It follows from all of the preceding arguments that the action must be dismissed in its entirety.

Costs

155 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

156 Since the applicants have been unsuccessful, they must be ordered to pay, in addition to their own costs, the costs incurred by the Commission, in accordance with the form of order sought by the Commission to that effect.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

- 1. Dismisses the action;**
- 2. Orders the applicants to pay the costs.**

Pirrung

Meij

Forwood

Pelikánová

Papasavvas

Delivered in open court in Luxembourg on 10 May 2006.

E. Coulon

Registrar

J. Pirrung

President

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