

Mark or sign cited: The national word mark 'FLEX' for goods in classes 3 and 34

Decision of the Opposition Division: Opposition upheld in its entirety

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 15 and 43(2) of Council Regulation No 40/94 as the evidence filed by Revlon (Suisse) S.A. cannot be considered valid proof of genuine use of the word mark 'FLEX' during the relevant period, neither in the UK nor in France

Infringement of Article 8(1)(b) of the Regulation as there is no similarity between the conflicting trade marks and consequently no likelihood of confusion.

Action brought on 30 December 2005 — Toyoda Koki Kabushiki Kaisha/OHIM

(Case T-462/05)

(2006/C 74/51)

Language of the case: English

Parties

Applicant: Toyoda Koki Kabushiki Kaisha (Aichi-Ken, Japan) [represented by: J. F. Wachinger, lawyer]

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

Form of order sought

- Declare the decision taken by the First Board of Appeal of the Office for Harmonisation in the Internal Market of 14 September 2005, in Case R 1157/2004-1 to be void and to allow the registration of the word mark application No. 003157492 'IFS' for the goods 'steering and power steering, both for vehicles and parts therefor, excluding independent front suspension' in the international class 12, referring to the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks,
- or, in the alternative, declare the decision taken by the First Board of Appeal of the Office for Harmonisation in the

Internal Market of 14 September 2005, in Case R 1157/2004-1 to be void, to remand the case to the Board of Appeal of the Office for Harmonisation in the Internal Market for reconsideration, and for the issuance of a new decision,

- impose the costs of the proceedings on the defendant.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'IFS' for goods in class 12 — application No 3 157 492

Decision of the examiner: Refusal of the application in respect of all the designated goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Violation of Article 7(1)(b) and (c) of Council Regulation No 40/94 because of amongst others a wrongful definition of the relevant public and an erroneous assumption of descriptive meaning.

Action brought on 12 January 2006 — Republic of Poland v Commission of the European Communities

(Case T-4/06)

(2006/C 74/52)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: Jarosław Pietras, Agent of the Government)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- declare Article 2 of Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year (OJ 2005 L 271 of 15.10.2005, p. 12) to be invalid;
- order the Commission of the European Communities to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant seeks a declaration of invalidity in respect of Article 2 of Regulation No 1686/2005, which sets the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year with a view to covering the outstanding balance of the overall loss, in accordance with Article 16 of Council Regulation (EC) No 1260/2001⁽¹⁾. The disputed article of the regulation sets out different coefficients for the additional levy for, on the one hand, the States constituting the Community prior to 1 May 2004 and, on the other, the 'new' Member States.

In support of its action, the applicant sets out the following heads of complaint:

- lack of competence on the part of the European Commission and breach of Article 16 of Council Regulation (EC) No 1260/2001, which, in the view of the applicant, empowers the European Commission to establish only one coefficient in a set amount for the entire Community, a fact which, according to the applicant, is confirmed by the various unequivocal and, in this regard, concordant language versions of the provisions contained in the regulation. The applicant further submits that the principles of the common organisation of the markets within the sugar sector not only cannot amount to justification for a departure from the textual interpretation of the provisions of Regulation (EC) No 1260/2001 but also rule out any such departure;
- infringement of the principle of immediate and full acceptance of the *acquis communautaire* by the new Member States; according to the applicant, the differential coefficient for the additional levy is in fact a transitional measure which has no basis in the Act of Accession or in the measures adopted pursuant thereto. The applicant refers in this regard to Article 2 of the Act of Accession, which is the basis for the adoption by the Republic of Poland of the full rights and obligations flowing from membership, and which, in the view of the applicant, is also linked to the assumption of entitlement to benefit from overpayments and the obligation to make good losses on the market in sugar which have arisen over the preceding marketing years;
- infringement of the principle of non-discrimination; the applicant criticises the Commission on the ground that the sole criterion for the differentiation in the coefficient in the regulation under challenge is the date on which Member States acceded to the European Union. In the applicant's view, the consequences of accession were exhaustively regulated in the Act of Accession and the measures adopted on the basis of that Act, and the date on which the European Union was enlarged cannot be an objective criterion capable of providing justification for the differentiation thus introduced;
- infringement of the principle of solidarity; according to the applicant, the differentiation in the coefficient vis-à-vis the other Member States amounts to an arbitrary and disproportionate distribution of the costs of financing the sugar market and one which highlights a dearth of solidarity;
- inadequate grounds given for the contested measure by reason of the European Commission's failure to indicate either the circumstances which could justify the differentiation in the coefficient or the objectives which such a differentiation ought to serve;
- breach of an essential procedural requirement, inasmuch as Regulation (EC) No 1686/2005 was adopted in a manner contrary to the requirements of Article 3 of the Rules of Procedure of the Management Committee for Sugar and Article 3 of Council Regulation (EEC) No 1 determining the languages to be used by the European Economic Community⁽²⁾ by reason of the fact that the European Commission, according to the applicant's contentions, did not submit during the 'comitological' procedure, a Polish-language version of the draft version of the contested measure. The applicant submits that this infringement is particularly flagrant in nature inasmuch as it relates to the draft version of a legal measure and reflects a consistent practice of the European Commission within the framework of the Management Committee for Sugar.

⁽¹⁾ Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178 of 30.06.2001, p. 1).

⁽²⁾ OJ, English Special Edition 1952-1958, p. 59, as amended.

Action brought on 9 January 2006 — Denmark v Commission

(Case T-5/06)

(2006/C 74/53)

Language of the case: Danish

Parties

Applicant: Kingdom of Denmark (Copenhagen, Denmark)
(represented by: Jørgen Molde, Agent)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- annul Commission Decision 2005/717/EC of 13 October 2005 amending for the purposes of adapting to the technical progress the Annex to Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment⁽¹⁾, so far as points 1 and 2 of the Annex relating to DecaBDE in polymeric applications are concerned;
- order the Commission to pay the costs of the proceedings.