Operative part of the judgment

Articles 43 EC and 48 EC do not preclude legislation of a Member State which makes it possible for a parent company to form a single tax entity with its resident subsidiary, but which prevents the formation of such a single tax entity with a non-resident subsidiary, in that the profits of that non-resident subsidiary are not subject to the fiscal legislation of that Member State.

([1]) OJ C 272, 25.10.2008.

Judgment of the Court (Fourth Chamber) of 25 February 2010 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Car Trim GmbH v KeySafety Systems Srl

(Case C-381/08) ([1])

(Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 5(1)(b) — Jurisdiction in matters relating to a contract — Determination of the place of performance of the obligation — Criteria for distinguishing between 'sale of goods' and 'provision of services')

(2010/C 100/05)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Car Trim GmbH

Defendant: KeySafety Systems Srl

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Contract for the supply of goods to be manufactured also including instructions from the customer with regard to the provision, fabrication and delivery of the components to be produced, including a guarantee of the quality of production, reliability of delivery and smooth administrative handling of the contract — Criteria for a distinction between sale of goods and supply of services — Determination of the place of performance of the obligation in the case of a sale involving the carriage of goods.

Operative part of the judgment

1. *Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that where the purpose of contracts is the supply of goods to be manufactured or produced and, even though the purchaser has specified certain requirements with regard to the provision, fabrication and delivery of the components to be produced, the purchaser has not supplied the materials and the supplier is responsible for the quality of the goods and their compliance with the contract, those contracts must be classified as a 'sale of goods' within the meaning of the first indent of Article 5(1)(b) of that regulation.*

2. *The first indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that, in the case of a sale involving carriage of goods, the place where, under the contract, the goods sold were delivered or should have been delivered must be determined on the basis of the provisions of that contract. Where it is impossible to determine the place of delivery on that basis, without reference to the substantive law applicable to the contract, that place is the place where the physical transfer of the goods took place, as a result of which the purchaser obtained, or should have obtained, actual power of disposal over those goods at the final destination of the sales transaction.*

([1]) OJ C 301, 22.11.2008.

Judgment of the Court (Fourth Chamber) of 25 February 2010 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Brita GmbH v Hauptzollamt Hamburg-Hafen

(Case C-386/08) ([1])

(EC-Israel Association Agreement — Territorial scope — EC-PLO Association Agreement — Refusal to apply to products originating in the West Bank the preferential tariff arrangements granted for products originating in Israel — Doubts as to the origin of the products — Approved exporter — Subsequent verification of invoice declarations by the customs authorities of the importing State — Vienna Convention on the Law of Treaties — Principle of the relative effect of treaties)

(2010/C 100/06)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Brita GmbH

Defendant: Hauptzollamt Hamburg-Hafen

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, signed at Brussels on 20 November 1995 (OJ 2000 L 147, p. 3) and in particular Articles 32 and 33 of Protocol 4 of that agreement, and of the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed at Brussels on 24 February 1997 (OJ 1997 L 187, p. 3) — Refusal to apply the preferential tariff regime granted to goods originating in Israel to goods originating in an Israeli settlement in the West Bank — Power of the authorities of the importing State to verify subsequently the proof-of-origin certificates in the absence of doubts concerning the origin of the goods in question other than those resulting from a divergence of opinion between the parties to the EEC-Israel Association Agreement as to the interpretation of the expression 'territory of the State of Israel' and in the absence of previous resort, for the purposes of the interpretation of that expression, to the dispute-settlement procedure provided for under Article 33 of Protocol 4 of that agreement

Operative part of the judgment

1. *The customs authorities of the importing Member State may refuse to grant the preferential treatment provided for under the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, signed in Brussels on 20 November 1995, where the goods concerned originate in the West Bank. Furthermore, the customs authorities of the importing Member State may not make an elective determination, leaving open the questions of which of the agreements to be taken into account — namely, the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, and the Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed in Brussels on 24 February 1997 — applies in the circumstances of the case and of whether proof of origin falls to be issued by the Israeli authorities or by the Palestinian authorities.*

2. *For the purposes of the procedure laid down in Article 32 of Protocol No 4 appended to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, the customs authorities of the importing State are not bound by the proof of origin submitted or by the reply given by the customs authorities of the exporting State where that reply does not contain sufficient information, for the purposes of Article 32(6) of that protocol, to enable the real origin of the products to be determined. Furthermore, the customs authorities of the importing State are not obliged to refer to the Customs Cooperation Committee set up under Article 39 of that protocol a dispute concerning the territorial scope of that agreement.*

[1] OJ C 285, 08.11.2008.

Judgment of the Court (Second Chamber) of 25 February 2010 — Lancôme parfums et beauté & Cie SNC v Office for Harmonisation in the Internal Market (Trade Marks and Designs), CMS Hasche Sigle

(Case C-408/08 P) [1]

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Articles 55(1)(a) and 7(1)(c) — Interest in bringing an application for a declaration of invalidity of a trade mark based on an absolute ground for invalidity — Law firm — Word sign 'COLOR EDITION' — Descriptive character of a word mark composed of descriptive elements)

(2010/C 100/07)

Language of the case: French

Parties

Appellant: Lancôme parfums et beauté & Cie SNC (represented by: A. von Mühlendahl, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral), CMS Hasche Sigle

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 8 July 2008 in Case T-160/07 Lancôme v OHIM — CMS Hasche Sigle in which the Court of First Instance dismissed the action brought by the appellant against the decision of the Second Board of Appeal of OHIM of 26 February 2007 declaring invalid the registration of the trade mark COLOR EDITION in respect of cosmetic and make-up goods — Infringement of Articles 7(1)(c) and 55(1)(a) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Legal