Article 6 of Directive 92/50 is applicable only if there are legislative, regulatory or administrative provisions published which grant the beneficiary an exclusive right concerning the subject-matter of the contract awarded.

(1) OJ C 235, 6.10.2007.

Appeal brought on 13 February 2008 by Gateway, Inc. against the judgment of the Court of First Instance (Fifth Chamber) delivered on 27 November 2007 in Case T-434/05: Gateway, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-57/08 P)

(2008/C 171/20)

Language of the case: English

Parties

Appellant: Gateway, Inc. (represented by: C. R. Jones, Solicitor)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Fujitsu Siemens Computers GmbH

Form of order sought

The appellant claims that the Court should:

— set aside the decision of the Court of First Instance (Fifth Chamber) of 27 November 2007 in Case T-434/05;

— allow in its entirety the appellant's opposition to the registration of the trade mark applied for;

— order OHIM to pay the costs.

Pleas in law and main arguments

The appellant submits that the Court of First Instance made the following errors:

a) The terms 'media gateway' and 'gateway' have a very specific meaning in the IT market for particular forms of device which convert one protocol or format to another. However, the Court of First Instance wrongly held that when 'gateway' was incorporated as an element of the mark applied for it served to designate descriptive characteristics of all the goods or services covered by the contested specification, whereas in fact none of the goods or services covered by the contested mark are listed as 'media gateways' or 'gateways'.

b) It wrongly defined the relevant public as made up of consumers who only purchase computer goods and services, rather than consumers of all the goods and services covered by the contested specification.

c) It wrongly held that the conflicting marks are not visually, phonetically or conceptually similar.

d) It wrongly held that the question of similarity in respect of two conflicting word marks should be subject to the condition that the overall visual, phonetic or conceptual impression produced by the composite word sign be dominated by the part which is represented by the earlier mark.

e) When conduction its assessment of the similarity between the conflicting marks it failed to give sufficient weight to the distinctiveness of 'gateway' as an earlier trade mark of the appellant's for computer goods and services within the relevant target public.

f) It failed to give sufficient regard to the fact that trade marks with a highly distinctive character, either per se or because of the reputation they possess, enjoy greater protection than marks with a less distinctive character.

g) It wrongly concluded that 'gateway' does not have an independent distinctive role within the mark applied for.

h) It wrongly held that the likelihood of confusion should be subject to the condition that the overall impression produced by the composite sign be dominated by the part which is represented by the earlier mark.

i) It failed to assess properly the likely visual, conceptual and phonetic impact the word 'gateway' would have on the average consumer of the goods and services in issue when incorporated as an element of the mark applied for.

Reference for a preliminary ruling from the Bundesfinanzhof lodged on 2 April 2008 — J.E. Tyson Parketthandel GmbH hanse j. v Hauptzollamt Bremen

(Case C-134/08)

(2008/C 171/21)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties to the main proceedings

Applicant: J.E. Tyson Parketthandel GmbH hanse j.

Defendant: Hauptzollamt Bremen