**Appeal brought on 7 July 2008 by Leche Celta SL against the judgment delivered on 23 April 2008 in Case T-35/07 Leche Celta SL v OHMI**

**(Case C-300/08 P)**

(2008/C 223/57)

*Language of the case: French*

**Parties**

*Appellant:* Leche Celta SL (represented by: J Calderón Chavero and T. Villate Consonni, lawyers)

*Other party/parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade marks and Designs), Celia SA

**Form of order sought**

— Annul the judgment of the Third Chamber of the Court of First Instance of 23 April 2008 in Case T-35/07 on the grounds that the marks CELIA/CELTA are clearly incompatible;

— Order payment of costs.

**Pleas in law and main arguments**

By its appeal the appellant challenges in essence the assessment made by the Court of First Instance on the similarity of the marks at issue. According to the appellant, the similarity of the two marks is such that the relevant public will not be able to detect any difference between them, the more so when the goods covered by them are identical. The Court therefore committed several errors of assessment by judging the degree of verbal and conceptual similarity between the marks at issue to be low.

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**Action brought on 9 July 2008 — Commission of the European Communities v Kingdom of Spain**

**(Case C-306/08)**

(2008/C 223/58)

*Language of the case: Spanish*

**Parties**

*Applicant:* Commission of the European Communities (represented by: A. Alcover San Pedro and D. Kukovec, acting as Agents)

*Defendant:* Kingdom of Spain

**Form of order sought**

— Declare that, in awarding the Integrated Action Programmes in accordance with Law 6/1994 of 15 November, regulating development activities in the Valencian Community, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 93/37/EEC [1] of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, and particularly Articles 1, 6(6), 11, 12 and Title II of Capital IV thereof (Articles 24 to 29),

and that, in awarding the Integrated Action Programmes in accordance with Law 16/2005, Valencian development law, implemented by Decree 67/2006 of the Region of Valencia of 12 May, establishing the Regulation of Town Planning and Management, the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 6, 24, 30, 31(4)(a), 48(2) and 53 of Directive 2004/18/EC [2] of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

— order the Kingdom of Spain to pay the costs.

**Pleas in law and main arguments**

The Commission states that the awarding of the Integrated Action Programmes (IAP), an urban development measure established by Law 6/1994 of 15 November, Valencian Law on development activities ('LRAU') and its successor, Law 16/205, Valencian development law ('LUV') relates to public works contracts which should be awarded in accordance with Directive 93/37/EC and Directive 2004/18/EC. In other words, the Commission affirms that the IAP are public works contracts awarded by local bodies which include the carrying out of public infrastructure works by urban developers chosen by the local authorities.

The Commission considers that the LUV infringes the Community public procurement directives in various aspects, in relation, inter alia, to the privileged position of the first bidder, the experience of bidders in similar contracts, the provision of alternatives to the proposal of the first bidder 'in open envelope', the regulation of variants, the criteria for awarding IAP contracts, the possibility of amending the contract after it has been awarded (for example, the possibility of increasing development fees) and the regulation of cases of incomplete execution of the contract by the bidder to which the contract has been awarded. Some of those infringements concern both the LRAU and the LUV, and others just the LUV.

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[1] OJ 1993 L 199, p. 54.
[2] OJ 2004 L 134, p. 114.