

Appeal brought on 22 September 2008 by Apple Computer, Inc. against the judgment of the Court of First Instance (Third Chamber) delivered on 1 July 2008 in Case T-328/05 Apple Computer, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-416/08 P)

(2008/C 301/38)

Language of the case: English

Parties

Appellants: Apple Computer, Inc. (represented by: M. Hart, N. Kearley, Solicitors)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), TKS-Teknosoft SA

Form of order sought

The appellant claims that the Court should order that:

- The appeal by the applicant to the European Court of Justice be allowed;
- The judgment of the Court of First Instance of the European Communities (CFI) in case T-328/05 of 1 July 2008 be set aside;
- The case be referred back to the CFI; and
- The costs in the case be reserved.

Pleas in law and main arguments

1. Apple, Inc., (the applicant) has applied to register a Community Trademark for the word mark 'QUARTZ'. Its application covers:

'A computer operating system functionality specially intended for use by IT developers with the aim of improving and accelerating the reproduction of digital images in application programs, except products intended for the banking sector' in Class 9.

2. TKS-Teknosoft S.A. (the 'Opponent') is the registered proprietor of a Community Trade Mark Registration for the figurative mark 'QUARTZ', which was in respect of, amongst other things:

- (a) 'packets of programs for banking' in Class 9; and
- (b) 'computer programming, computer data processing, computer software development, assistance and consulting services in the computer field electronic data processing, computer software design and development, licensing of computer software and computer applications; all these services being linked to banking' in Class 42.

The Opponent opposes the registration of the Applicant's QUARTZ mark on the basis that there would be a likelihood of confusion between the two marks. The Court of First Instance agreed.

The Applicant submits that the CFI erred in law because:

- (a) the goods in respect of which the two marks would be registered and used are clearly different and the CFI failed to take into account those relevant differences;
- (b) it did not correctly identify the relevant 'public' for the purposes of assessing whether confusion was likely. In particular, it did not give sufficient weight to the fact that the relevant public must logically be software specialists employed in or providing services to the banking sector; and
- (c) it therefore misapplied the global appreciation test as previously set out by the European Court of Justice.

Action brought on 22 September 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-417/08)

(2008/C 301/39)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A.A. Gilly and U. Wölker, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

- Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 concerning environmental liability with regard to the prevention and remedying of environmental damage⁽¹⁾, or in any event by failing to communicate them to the Commission, the United Kingdom has failed to fulfil its obligations under the Directive;

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 30 April 2007.

⁽¹⁾ OJ L 143, p. 56.

Action brought on 22 September 2008 — Commission of the European Communities v Ireland

(Case C-418/08)

(2008/C 301/40)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and A.A. Gilly, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 concerning environmental liability with regard to the prevention and remedying of environmental damage ⁽¹⁾, or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 30 April 2007.

⁽¹⁾ OJ L 143, p. 56.

Action brought on 24 September 2008 — Commission of the European Communities v Republic of Austria

(Case C-422/08)

(2008/C 301/41)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and B. Schöfer, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage ⁽¹⁾, or by failing to notify the Commission thereof, the Republic of Austria has failed to fulfil its obligations under that directive.

— Order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the Directive expired on 30 April 2007.

⁽¹⁾ OJ 2004 L 143, p. 56.

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) (United Kingdom) made on 29 September 2008 — Karen Murphy v Media Protection Services Limited

(Case C-429/08)

(2008/C 301/42)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)