Court of First Instance. That party had not in fact demonstrated that it had an actual or potential economic interest which, in itself, might warrant a law firm, acting on its own behalf, having the capacity to bring legal proceedings for a declaration of the invalidity of a trade mark for cosmetics. Community law does not recognise actions brought in the absence of a private individual or economic interest (*actio popularis*).

According to the appellant, to concede that a lawyer, acting on its own behalf, may bring an application for removal from the register of a trade mark is, on any view, incompatible with the professional profile of a lawyer, as a member of the legal profession.

By its second plea, the appellant challenges the finding of the Court of First Instance that the trade mark COLOR EDITION is perceived as descriptive and consequently falls under Article 7(1)(c) of Regulation No 40/94. That interpretation conflicts with the Court's case-law relating to the constituent elements of the concept of a descriptive mark. Being able to infer from a trade mark the protected goods and their characteristics is not an adequate test. It is necessary to ascertain whether the chosen terms, taken individually as well as jointly, are known and usually employed in the everyday language of the relevant public.

([1]) OJ 1994 L 11, p. 1.

Action brought on 6 October 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-442/08)

(2009/C 6/17)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: A. Caeiros and B. Kotschy, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that the Federal Republic of Germany has infringed its obligations under Articles 2, 6, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources ([1]) or, as the case may be, of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources ([2]), by

— allowing tariff claims to become time-barred, irrespective of the receipt of a mutual assistance sheet, and making a late entry in the accounts of the own resources owed in this connection;

— refusing to pay the accrued default interest;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

From 1994 onwards, motor vehicles from Hungary were imported into Germany within the framework of the preferential tariff treatment laid down in the EC-Hungary Europe Agreement. By way of a mutual assistance sheet of 26 June 1998, the European Anti-Fraud Office (OLAF) officially informed the Member States that, at the end of their revision, the Hungarian authorities revoked the declarations of origin for 58 006 vehicles (including 19 123 vehicles for Germany). By way of a letter of which the English version was delivered to the German authorities on 13 July 1998 and the German translation on 18 August 1998, OLAF forwarded the documents and files forming part of that mutual assistance sheet, including the letter of 26 May 1998, by which the Hungarian authorities informed OLAF of the results of the revision and pointed out that the Hungarian manufacturer had brought an action before a Hungarian court against the decisions of the Hungarian authorities. By way of a further mutual assistance sheet of 27 October 1999, OLAF informed the Member States of the outcome of those proceedings. As a result of the re-assessment of the declarations of origin that became necessary following the judgment of the Hungarian court, declarations of origin for 30 771 vehicles remained revoked on the ground of invalidity.

The results of a Commission mission in Germany regarding the control of own resources and information provided by the German authorities showed that the German authorities allowed entitlements in the amount of EUR 408 735,35 for the import of motor vehicles whose declarations of origin remained revoked even after the re-assessment following the judgment of the Hungarian court, to become time-barred. Following a request by the Commission, the own resources owed for those time-barred tariff claims were made available by the German authorities on 31 October 2005, in other words, after the expiry of the time-period provided for in Regulation No 1552/89 (or, as the case may be, Regulation No 1150/2000); however, the German authorities refused to pay default interest in respect of the late entry of those own resources.

The Commission bases the present action essentially on two grounds, namely, first, the late entry of the own resources (in the accounting ledger) and, second, the refusal to pay default interest in respect of that late entry. According to the Commission, at the latest as of 18 August 1998 (the date by which the documents and files forming part of the mutual assistance sheet of 26 June 1998 had been sent out in all languages), all Member States were in a position to identify debtors and the amount of the claim and therefore ought, from then onwards, to have taken the necessary steps to collect the relevant entitlements and to establish, and pay, the own resources connected with it. Taking into consideration an appropriate time-limit of three months for the introduction of such measures, the Commission took the position that all Member States which failed to act are liable for the entitlements that were time-barred from 18 November 1998 onwards.

As regards the Commission's first plea in law, namely the late entry of the own resources, the relevant provisions of Regulation No 1552/89 (or, as the case may be, Regulation No 1150/2000) and the case-law of the Court of Justice show that the Member States are under an obligation to establish the own resources of the Communities and that this obligation exists irrespective of whether or not the entitlements have actually been entered in the accounts, or, as the case may be, whether or not it was possible to collect the entitlements from the debtor. In principle, the incurrence of a customs debt gives the Communities a right to the customary own resources connected to that customs debt, and does so even where the entitlement was not entered in the accounting ledgers or was not collected from the debtor in an individual case. The moment at which the own resources ought to be established is determined by the moment at which the national customs authorities are in a position to calculate the entitlement arising from a customs debt and to identify the debtor.

The question as to which position is to be adopted by the customs authorities of a Member State into which goods have been imported accompanied by declarations of origin which, following a revision, are revoked on the ground of invalidity cannot be answered on the basis of the laws of the relevant third country. Given that Protocol No 4 to the EC-Hungary Association Agreement likewise does not contain provisions to that effect, other sources of Community law have to be examined to determine what Member States have to do once they have been informed of the results of a revision which raised doubts as to the origin of the goods. Article 78(3) of Regulation No 2913/92 provides that the customs authorities of the Member States are to take the measures necessary to regularise the situation, taking account of the new information available to them. In the same way, the regulation requires Member States, following the incurrence of a customs debt, to rapidly implement the procedure for collecting the debt, both during the first phase of the procedure, which consists of entering the entitlement in the accounts, and the phase during which the entitlement is collected from the debtor.

Pursuant to Article 244 of Regulation No 2913/92, the lodging of an appeal against a decision taken by the customs authorities of Member States is not to cause implementation of that decision to be suspended, except in exceptional circumstances. Under normal circumstances, suspension of implementation is to be subject to the existence or lodging of a security. Therefore, in cases in which the incurrence of a customs debt results from the revocation of the declarations of origin at the end of a revision, the fact that legal action has been brought cannot, in the Commission's view, preclude the customs authorities of the importing Member State from (subsequently) collecting the entitlements. Given that the goods were already brought into the Community and that the court proceedings may take several years, such suspension could render the collection of the customs debt far more difficult if the legal action were dismissed.

Finally, as regards the Commission's second plea in law, namely the refusal to pay default interest, Article 11 of Regulation No 1552/89 (or, as the case may be, Regulation No 1150/2000) and the case-law of the Court of Justice show that, even where own resources fail to be established, Member States are required to pay default interest. In the present case, the contested amount of own resources ought to have been entered in the accounts at the latest two months after 18 November 1998, on the first working day following the 19th of that month (in other words, on 20 January 1999). Given that the German authorities only made the entry on 31 October 2005, the Federal Republic of Germany delayed the entry and is under an obligation to pay default interest for the period of delay.

([1]) OJ 1989 L 155, p. 1.
([2]) OJ 2000 L 130, p. 1.

Action brought on 7 October 2008 — Commission of the European Communities v French Republic

(Case C-443/08)

(2009/C 6/18)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and J.-B. Laignelot, Agents)

Defendant: French Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the laws and regulations necessary to correctly transpose Article 2(3), Article 2(4) and Article 4(4) of Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations ([1]) as regards the definition of the concepts of 'small installation' and 'substantial change' and the obligations applying to existing installations, the French Republic has failed to fulfil its obligations under that directive;