

2. If the first question is answered in the affirmative:

Is the chance of taking part in a prize competition, which is acquired with the purchase of a newspaper, an unfair commercial practice within the meaning of Article 5(2) of the Unfair Commercial Practices Directive merely because that chance is, for at least some of those to whom the offer is addressed, not the only, but the decisive reason for purchasing the newspaper?

(¹) OJ L 149, p. 22.

Reference for a preliminary ruling from the Finanzgericht München (Germany) lodged on 11 December 2008 — British American Tobacco (Germany) GmbH v Hauptzollamt Schweinfurt

(Case C-550/08)

(2009/C 69/34)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: British American Tobacco (Germany) GmbH

Defendant: Hauptzollamt Schweinfurt

Questions referred

1. Must the first indent of the first subparagraph of Article 5(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (¹) be interpreted as meaning that non-Community goods subject to excise duty which have been placed under an inward processing procedure within the terms of Article 84(1)(a) of Regulation (EEC) No 2913/92 (Customs Code) are to be deemed to be subject to duty-suspension arrangements even if they are produced, under an inward processing procedure, from goods which are not subject to excise duty only after the importation of those goods and therefore, in accordance with the 15th recital in the preamble to Directive 92/12/EEC, when they are being moved there is no need for the accompanying document referred to in Article 18(1) of Directive 92/12/EEC to be used?

2. If the first question is to be answered in the negative:

Must Article 15(4) of Directive 92/12/EEC be interpreted as meaning that proof that the consignee has taken delivery of the goods may also be provided otherwise than by means of the accompanying document referred to in Article 18 of Directive 92/12/EEC?

(¹) OJ 1992 L 76, p. 1.

Appeal brought on 16 December 2008 by Powerserv Personalservice GmbH, formerly Manpower Personalservice GmbH, against the judgment of the Court of First Instance (Fifth Chamber) delivered on 15 October 2008 in Case T-405/05 Powerserv Personalservice GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-553/08 P)

(2009/C 69/35)

Language of the case: German

Parties

Appellant: Powerserv Personalservice GmbH, formerly Manpower Personalservice GmbH (represented by: B. Kuchar, Rechtsanwältin)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

- Set aside the judgment under appeal of the Court of First Instance of 15 October 2008 in Case T-405/05 and declare Community trade mark No 76059 invalid in respect of all goods and services;
- set aside the judgment under appeal of the Court of First Instance of 15 October 2008 in Case T-405/05 inasmuch as it relates to the failure to prove the acquired distinctive character of Community trade mark No 76059, and refer the case back to the Court of First Instance;
- in any event, order OHIM and the proprietor of the Community trade mark to bear their own costs and to pay the appellant's costs as regards the proceedings before the Board of Appeal of OHIM, the Court of First Instance and the Court of Justice.