

**Questions referred**

1. Is Article 21(1)(a) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration <sup>(1)</sup> to be interpreted as meaning that a right within the meaning of that provision exists,
- (a) if, without any intention to use it for goods or services, a trade mark is acquired only for the purpose of being able to register in the first phase of phased registration a domain corresponding to a German-language generic term?
- (b) if the trade mark underlying the domain registration and coinciding with a German-language generic term deviates from the domain in so far as the trade mark contains special characters which were eliminated from the domain name although the special characters were capable of being rewritten and their elimination has the effect that the domain differs from the trade mark in a way which excludes any likelihood of confusion?
2. Is Article 21(1)(a) of Regulation (EC) No 874/2004 to be interpreted as meaning that a legitimate interest exists only in the cases mentioned in Article 21(2)(a) to (c)?

If that question is answered in the negative:

3. Does a legitimate interest within the meaning of Article 21(1)(a) of Regulation (EC) No 874/2004 exist if the domain holder intends to use the domain — coinciding with a German-language generic term — for a thematic internet portal?

If questions (1) and (3) are answered in the affirmative:

4. Is Article 21(3) of Regulation (EC) No 874/2004 to be interpreted as meaning that only the circumstances mentioned in subparagraphs (a) to (e) are capable of establishing bad faith within the meaning of Article 21(1)(b) of Regulation (EC) No 874/2004?

If that question is answered in the negative:

5. Does bad faith within the meaning of Article 21(1)(b) of Regulation (EC) No 874/2004 exist if a domain was registered in the first phase of phased registration on the basis of a trade mark, coinciding with a German-language generic term, which the domain holder acquired only for the purpose of being able to register the domain in the first phase of phased registration and thereby to pre-empt other interested parties, including the holders of rights to the mark?

<sup>(1)</sup> OJ 2004 L 162, p. 40.

**Action brought on 29 December 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland**

(Case C-582/08)

(2009/C 69/41)

*Language of the case: English*

**Parties**

*Applicant:* Commission of the European Communities (represented by: R. Lyal, M. Afonso, Agents)

*Defendant:* United Kingdom of Great Britain and Northern Ireland

**The applicant claims that the Court should:**

- declare that by denying recovery of input tax in respect of certain transactions carried out by taxable persons not established in the territory of the European Community, the United Kingdom has failed to comply with its obligations under Articles 169, 170 and 171 of Council Directive 2006/112/EC <sup>(1)</sup> of 28 November 2006 on the common system of value added tax and with Article 2(1) of the Thirteenth VAT Directive 86/560/EEC <sup>(2)</sup> of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory;
- order United Kingdom of Great Britain and Northern Ireland to pay the costs.

**Pleas in law and main arguments**

The Commission submits that Article 2(1) of the Thirteenth VAT Directive cannot be interpreted as excluding the refund of VAT charged on goods or services used for the purposes of the insurance and financial transactions mentioned in Article 17(3)(c) of the Sixth VAT directive <sup>(3)</sup>. The Commission therefore takes the view that the United Kingdom legislation, in so far as it denies the right to a refund of that VAT to taxable persons not established in the territory of the European Community, is in breach of Community law.

<sup>(1)</sup> OJ L 347, p. 1.

<sup>(2)</sup> OJ L 326, p. 40.

<sup>(3)</sup> OJ L 145, p. 1. Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.