

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2007/16/EC⁽¹⁾ of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions, or in any event by failing to communicate those measures to the Commission, the Portuguese Republic has failed to fulfil its obligations under Directive 2007/16/EC;

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 23 March 2008.

⁽¹⁾ OJ 2007 L 79, p. 11.

Appeal brought on 9 July 2009 by Calvin Klein Trademark Trust against the judgment of the Court of First Instance (Sixth Chamber) delivered on 7 May 2009 in Case T-185/07 Calvin Klein Trademark Trust v OHIM and Zafra Marroquinos, S.L.

(Case C-254/09 P)

(2009/C 205/50)

Language of the case: Spanish

Parties

Appellant: Calvin Klein Trademark Trust (represented by: T. Andrade Boué, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Zafra Marroquinos, S.L.

Form of order sought

— Set aside the judgment of the Court of First Instance (Sixth Chamber) of 7 May 2009 in Case T-185/07;

— Order OHIM and Zafra Marroquinos, S.L. to pay the costs.

Pleas in law and main arguments

The judgment runs counter to the case-law on the interpretation of Article 8(1) of Regulation No 40/94⁽¹⁾ on the Community trade mark concerning the need to take into account all the factors characterising a specific case: the Court of First Instance failed to give appropriate legal weight to the fact that the party applying for the Community trade mark has used that mark to copy the cK marks which have reputation, and through its own acts, it makes it clear, in no uncertain terms, that the letters CK constitute the most distinctive part of the Community trade mark in question.

Infringement of Article 8(5) of Regulation No 40/94 as the Court of First Instance failed to assess the reputation of the opposing marks in the context of that article.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 9 July 2009 — Commission of the European Communities v Portuguese Republic

(Case C-255/09)

(2009/C 205/51)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and M. França, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that the Portuguese Republic has failed to fulfil its obligations under Article 49 EC, by not providing for the reimbursement of non-hospital medical expenses incurred in another Member State, other than in the circumstances laid down in Regulation (EEC) No 1408/71,⁽¹⁾ either in Decree-Law No 177/92 of 13 August, which lays down the conditions for reimbursement of medical expenses incurred abroad, or in any other provision of national law; or to the extent that that Decree-Law allows for the reimbursement of non-hospital medical expenses incurred in another Member State, by making such reimbursement subject to prior authorisation.

— Order the Portuguese Republic to pay the costs.