More specifically, the Greek ministerial order lays down general rules regarding the frequency of physical checks of consignments of feed and food of non-animal origin from third countries, which do not enable the physical checks to be carried out by the competent authority with the degree of flexibility and of differentiation that is required for the system laid down by Article 16(1) and (2) of Regulation (EC) No 882/2004.

Furthermore, it lays down general rules concerning the official detention of such consignments, which provide for the official detention of consignments even in the case of routine checks. That indiscriminate detention of consignments without suspicion of non-compliance or doubt is contrary to Article 18 of Regulation (EC) No 882/2004. In addition, the ministerial order allows the release of all consignments after seven working days, even where there is suspicion of non-compliance or doubt, which also infringes Article 18 of the regulation.

The ministerial order lays down specific rules concerning checks of consignments from third countries for the presence of unauthorised genetically modified organisms. Those checks must be carried out at a frequency of 50 % for consignments of wheat and 100 % for consignments of corn. The Commission considers that these rates are exceptionally high and are not compatible with the system established by Regulation (EC) No 882/2004, in particular Article 16(1) and (2) thereof, and that they result from a failure to assess the risk correctly and to differentiate.

The ministerial order lays down that checks of consignments of corn from Bulgaria and Romania for the presence of unauthorised genetically modified organisms are to be carried out at a frequency of 100 %. The Commission considers that checks at such a frequency are contrary to Regulation (EC) No 882/2004, which provides that checks of consignments from other Member States must be based on the risks and be non-discriminatory and proportionate.

The Hellenic Republic has not put forward sufficient explanation and information to justify the adoption of the above-mentioned provisions of the ministerial order relating to official controls in respect of cereals upon their importation from third countries and other Member States of the European Union.

Appeal brought on 12 February 2010 by Longevity Health Products, Inc against the judgment of the General Court (Eighth Chamber) delivered on 9 December 2009 in Case T-484/08 Longevity Health Products, Inc v OHIM — Merck (Kids Vids)

(Case C-84/10 P)

(2010/C 100/44)

Language of the case: German

Parties

Appellant: Longevity Health Products, Inc (represented by: J. Korab, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Merck KGaA

Form of order sought

By its appeal, the appellant claims that the Court should:

1. Declare the appeal of Longevity Health Products, Inc admissible,

2. annul judgment of the General Court of 19 December 2009 in Case T-484/08 and

3. order the defendant to pay all the costs.

Pleas in law and main arguments

The present appeal is brought against the judgment of the General Court, dismissing the appellant's action for annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM) of 28 August 2008 on the dismissal of the application for registration as a Community trade mark of the sign 'Kids Vits'. The Court delivered a ruling confirming the decision of the Board of Appeal, according to which there was a likelihood of confusion with the earlier Community word mark 'VITS4KIDS'.

The grounds of appeal relied upon are a breach of procedure and the infringement of Article 8(1)(b) of Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

The appellant asserts that the General Court committed a procedural error by not setting a time-limit for lodging a response to the defence submitted by the respondent despite the reasoned request by the appellant. In breach of Community law rules applicable to proceedings before the General Court and the Court of Justice, the applicant's right to a fair hearing was infringed and its right to legal protection impaired.

The appellant submits that the General Court infringed Article 8(1)(b) of Regulation No 40/94 by wrongly failing to undertake in its assessment of the likelihood of confusion an overall appraisal of all factors. The Court wrongly held that the noticeable similarities of the opposing marks were sufficient to find that there was a likelihood of confusion for the purposes of trade mark law.

In particular the Court did not take sufficient account of the fact that the marks at issue predominantly concern goods and services broadly connected to human health, and therefore a high level of attention can be expected from the relevant class of persons. Consumers are perfectly aware, that in the case of trade mark names derived from and based on chemical nomenclature, even slight differences play a role. Furthermore the attentiveness of consumers is further increased by the fact that confusion of the goods may have very unpleasant consequences. That mere fact alone calls for a higher level of attention.

The Court did not take account of the fact that, the terms of the marks 'Kids' 'Vits' und 'VITS4KIDS' are substantially different, as the phonetic reproductions of the brand names show appreciable differences. The pronunciation of brand names contribute largely to the memory that a consumer has of a trade mark and on this ground alone there is no likelihood of confusion. Although there is visual similarity, the words 'Kids' and 'Vits' are nevertheless placed differently in the marks at issue and in the case of the intervener's mark supplemented by a further sign, (namely a number '4', which should be pronounced as 'for' in the sense of 'intended for'). Furthermore both marks follow as a whole two separate schemes of construction of composite terms, which is of itself sufficient to ensure their distinctiveness.

Reference for a preliminary ruling from the Tribunale Ordinario di Vicenza — Sezione distaccata di Schio (Italy) lodged on 15 February 2010 — Electrosteel Europe SA v Edil Centro SpA

(Case C-87/10)

(2010/C 100/45)

Language of the case: Italian

Referring court

Tribunale Ordinario di Vicenza

Parties to the main proceedings

Applicant: Electrosteel Europe SA

Defendant: Edil Centro SpA

Question referred

Must Article 5(1)(b) of Regulation (EC) No 44/01 ([1]) — and, in any event, Community law — which lays down that, in the case of the sale of goods, the place of performance of an obligation is the place where, under the contract, the goods were delivered or should have been delivered, be interpreted as meaning that the place of delivery, relevant for the purposes of determining the court having jurisdiction, is the place of final destination of the goods covered by the contract or the place in which the seller is discharged of his obligation to deliver, in accordance with the substantive rules applicable to the individual case, or is that rule open to a different interpretation?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001, L 12, p. 1).

Reference for a preliminary ruling from the Tribunale di Palermo (Italy) lodged on 15 February 2010 — Assessorato del Lavoro e della Previdenza Sociale v Seasoft SpA

(Case C-88/10)

(2010/C 100/46)

Language of the case: Italian

Referring court

Tribunale di Palermo