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