Reference for a preliminary ruling from High Court of Justice Queen's Bench Division (Administrative Court) (United Kingdom) made on 22 July 2010 — The Air Transport Association of America, American Airlines, Inc., Continental Airlines, Inc., United Airlines, Inc. v The Secretary of State for Energy and Climate Change

(Case C-366/10)

(2010/C 260/12)

Language of the case: English

Referring court

High Court of Justice Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: The Air Transport Association of America, American Airlines, Inc., Continental Airlines, Inc., United Airlines, Inc.

Defendant: The Secretary of State for Energy and Climate Change

Questions referred

1. Are any or all of the following rules of international law capable of being relied upon in this case to challenge the validity of Directive 2003/87/EC [1] as amended by Directive 2008/101/EC [2] so as to include aviation activities within the EU Emissions Trading Scheme (together the 'Amended Directive'):

   (a) the principle of customary international law that each state has complete and exclusive sovereignty over its air space;

   (b) the principle of customary international law that no state may validly purport to subject any part of the high seas to its sovereignty;

   (c) the principle of customary international law of freedom to flyover the high seas;

   (d) the principle of customary international law (the existence of which is not accepted by the Defendant) that aircraft overflying the high seas are subject to the exclusive jurisdiction of the country in which they are registered, save as expressly provided for by international treaty;

   (e) the Chicago Convention (in particular Articles 1, 11, 12, 15 and 24);

   (f) the Open Skies Agreement (in particular Articles 7, 11(2)(c) and 15(3));

   (g) the Kyoto Protocol (in particular, Article 2(2))?

   To the extent that question 1 may be answered in the affirmative:

2. Is the Amended Directive invalid, if and insofar as it applies the Emissions Trading Scheme to those parts of flights (either generally or by aircraft registered in third countries) which take place outside the airspace of EU Member States, as contravening one or more of the principles of customary international law asserted above?

3. Is the Amended Directive invalid, if and insofar as it applies the Emissions Trading Scheme to those parts of flights (either generally or by aircraft registered in third countries) which take place outside the airspace of EU Member States:

   (a) as contravening Articles 1, 11 and/or 12 of the Chicago Convention;

   (b) as contravening Article 7 of the Open Skies Agreement?

4. Is the Amended Directive invalid, insofar as it applies the Emissions Trading Scheme to aviation activities:

   (a) as contravening Article 2(2) of the Kyoto Protocol and Article 15(3) of the Open Skies Agreement;

   (b) as contravening Article 15 of the Chicago Convention, on its own or in conjunction with Articles 3(4) and 15(3) of the Open Skies Agreement;

(c) as contravening Article 24 of the Chicago Convention, on its own or in conjunction with Article 11(2)(c) of the Open Skies Agreement?

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance) OJ L 275, p. 32

(2) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance) OJ L 8, p. 3

Appeal brought on 22 July 2010 by Ravensburger AG against the judgment of the General Court (Eighth Chamber) delivered on 19 May 2010 in Case T-108/09: Ravensburger AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Educa Borras, S.A.

(Case C-369/10 P)

(2010/C 260/13)

Language of the case: English

Parties

Appellant: Ravensburger AG (represented by: H. Harte-Bavendamm, M. Goldmann, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Educa Borras, S.A.

Form of order sought

The appellant claims that the Court should:

— allow the Appeal against the judgment of the General Court of 19 May 2010 (Case T-108/09);

— set aside the judgment of the General Court;

— annul the decision of the Second Board of Appeal of 8 January 2009 (Case R 305/2008-2) and, as appropriate, the decision of the Cancellation Division of 3 September 2006 (Case 1107C);

— (as appropriate) remit the case to the OHIM for fresh consideration;

— order the Intervener and the OHIM to pay the Appellant's costs of this Appeal.

Pleas in law and main arguments

The appellant submits that the contested judgment should be set aside on the following grounds:

1. Distortion of evidence by misrepresenting the Appellant's factual statements regarding the list of goods of the Community trade mark in question by asserting that it was 'not disputed in the present case that the goods for which the mark at issue was registered include, in particular, memory games'.

2. Distortion of evidence by applying Article 52(1)(a) in conjunction with Article 7(1)(c) of the Community Trade Mark Regulation (1) and application of a flawed and overly restrictive test in assessing the descriptive character of a word mark, namely Community trade mark registration No 1 203 629 'MEMORY'.

3. Distortion of evidence by applying Article 52(1)(a) in conjunction with Article 7(1)(b) of the Community Trade Mark Regulation and application of a flawed and overly restrictive test in assessing the lack of distinctiveness of a word mark, namely Community Trade Mark registration No 1 203 629 'MEMORY'.

4. Distortion of evidence by almost exclusively relying on assumed linguistic usage in distant non-European countries.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1