

the fact that the goods 'computer software' in Class 9 were to be used only 'in particular' to obtain and process business data was disregarded. Software with other uses could therefore also be the subject of the mark applied for. In addition, engineers and other persons who had no knowledge of specialist management science-related terminology also worked with the applicant's software. The Court's assessment was therefore based on incorrect factual assumptions.

Furthermore, the Court was of the opinion, again proceeding on an incorrect factual basis, that, while the element 'ROI' admittedly had different meanings in different languages, consumers would in connection with the word 'ANALYZER', always interpret the element 'ROI' to mean 'Return on Investment'. The Court was wrong to find that the consumers targeted would then without further consideration understand the mark applied for as describing 'an instrument for analysing the rate of return on investments'.

The Court also misinterpreted the underlying goods and services when assuming the existence of obstacles to the protection of computer hardware. Following division of the application, the sign was already registered with final legal effect with regard to those goods and services belonging to Classes 35 and 42.

Finally, the argument based on earlier registrations in the EU, namely as Community trade marks, was rejected on the basis that national marks could not be taken into account. In that instance also an incorrect factual basis was used.

Action brought on 17 November 2010 — European Commission v Republic of Poland

(Case C-542/10)

(2011/C 30/41)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: Ł. Habiak and S. La Pergola, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply fully with Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, ⁽¹⁾ and in any event by not informing the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under Article 94(1) of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2007/64 expired on 1 November 2009.

⁽¹⁾ OJ L 319, 5.12.2007, p. 1.

Appeal brought on 23 November 2010 by Hans-Peter Wilfer against the judgment of the General Court (Fourth Chamber) delivered on 8 September 2010 in Case T-458/08 Wilfer v Office for Harmonization in the Internal Market (Trade marks and Designs)

(Case C-546/10 P)

(2011/C 30/42)

Language of the case: German

Parties

Appellant: Hans-Peter Wilfer (represented by: W. Prinz, Rechtsanwalt)

Other party: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Forms of order sought

The appellant claims that the Court should:

— set aside in full the judgment of the General Court of 8 September 2010 in Case T-458/08;

— order OHIM to pay the costs.