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(¹) OJ L 347, p. 1

Action brought on 24 February 2011 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-86/11)

(2011/C 145/15)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Lyal, Agent)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

- declare that by permitting non-taxable persons to be members of a VAT group (a single taxable person for VAT purposes), the United Kingdom has failed to comply with its obligations under Articles 9 and 11 of Council Directive 2006/112/EC (¹) of 28 November 2006 on the common system of value added tax;
- order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

For reasons of facility and in order to combat possible abuses, the VAT directive allows Member States to treat two or more taxable persons together as a single taxable person. It is submitted that the directive does not allow them to include non-taxable persons in such a group, thus extending the rights and obligations of taxable persons to non-taxable persons. The United Kingdom legislation which permits the inclusion of non-taxable persons in a VAT group is thus contrary to the directive.

(¹) OJ L 347, p. 1

Appeal brought on 1 March 2011 by Chocoladefabriken Lindt & Sprüngli AG against the judgment of the General Court (First Chamber) delivered on 17 December 2010 in Case T-336/08 Chocoladefabriken Lindt & Sprüngli AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-98/11 P)

(2011/C 145/16)

Language of the case: German

Parties

Appellant: Chocoladefabriken Lindt & Sprüngli AG (represented by: G. Hild and R. Lange, lawyers)

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

Form of order sought

- Set aside the judgment of the General Court (First Chamber) of 17 December 2010 in Case T-336/08;
- Order OHIM to pay the costs.

Pleas in law and main arguments

The present appeal is brought against the judgment of the General Court, by which it dismissed the appellant's claim seeking annulment of the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 11 June 2008 on the rejection of its application for registration of a three-dimensional mark comprising the shape of a chocolate rabbit with a red band.

The appellant bases its appeal on an infringement of Article 7(1)(b) and Article 7(3) of Regulation No 40/94.

As regards the first ground of appeal, concerning the assessment of the marks' distinctive character, neither the assessment by OHIM nor the judicial review by the General Court satisfied the requirements in law, since both decisions were based on conjecture. OHIM speculated that the finding that a chocolate Easter bunny is a typical shape for Easter is valid for all Member States of the European Union and that that was not in dispute. That assertion has, however, always been in dispute, since the appellant has expressly disputed that assertion, adducing substantial evidence. OHIM and the General Court should have taken that into account in order correctly to fulfil their obligation of assessment under Article 74(1) of Regulation No 40/94. Further, the General Court reached the conclusion that the use of gold foil to wrap chocolate Easter bunnies is usual on the market, despite the fact that the judgment referred to only three other kinds wrapped in gold foil. Such a small number of goods cannot, in the view of the appellant, lead to that feature being regarded as 'usual in the market'.