

in respect of which registration is sought, the same type of goods are commonly found in the trade and the nature of the marks influences the perception of the marks by the targeted public.

- Infringement of Article 7(1)(b) of Regulation No 40/94: the requirements imposed by the Court of First Instance with respect to distinctiveness are too stringent.
- Infringement of Article 7(1)(b) of Regulation No 40/94: the Court of First Instance imposes incorrect requirements with respect to distinctiveness which are not provided for in the Regulation by presuming, without any factual basis, that the existence — assumed by it — of 'a wide variety of designs' and the average consumer's familiarity with shapes similar to those at issue influence distinctiveness.

(1) Not yet published in the European Court Reports.

(2) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, OJ 1994 L 11, p. 1.

**Reference for a preliminary ruling by the Social Security Commissioners, London, by order dated 28 March 2002, in the case of Brian Francis Collins against Secretary of State for Work and Pensions**

(Case C-138/02)

(2002/C 144/39)

Reference has been made to the Court of Justice of the European Communities by an order of the Social Security Commissioners, London, dated 28 March 2002, which was received at the Court Registry on 12 April 2002, for a preliminary ruling in the case of Brian Francis Collins and Secretary of State for Work and Pensions on the following questions:

1. Is a person in the circumstances of the claimant in the present case a worker for the purposes of Regulation No 1612/68<sup>(1)</sup> of the Council of 15 October 1968?
2. If the answer to question 1 is not in the affirmative, does a person in the circumstances of the claimant in the present case have a right to reside in the United Kingdom pursuant to Directive No 68/360<sup>(2)</sup> of the Council of 15 October 1968?
3. If the answers to both questions 1 and 2 are not in the affirmative, do any provisions or principles of European Community law require the payment of a social security benefit with conditions of entitlement like those for

income-based jobseeker's allowance to a person in the circumstances of the claimant in the present case?

(1) on freedom of movement for workers within the Community (OJ L 257, 19.10.1968, p. 2) (SE SER 1 68(II), p. 475).

(2) on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (OJ L 257, 19.10.1968, p. 13) (SE SER 1 68(II), p. 485).

**Reference for a preliminary ruling by the House of Lords, by order of that court dated 17 December 2001, in the case of Regina against Minister of Agriculture, Fisheries and Food, Ex parte: S.P. Anastasiou (Pissouri) Limited and others, Interveners: Cypfruvex (UK) Ltd, Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd**

(Case C-140/02)

(2002/C 144/40)

Reference has been made to the Court of Justice of the European Communities by an order of the House of Lords dated 17 December 2001, which was received at the Court Registry on 16 April 2002, for a preliminary ruling in the case of Regina against Minister of Agriculture, Fisheries and Food, Ex parte: S.P. Anastasiou (Pissouri) Limited and others, Interveners: Cypfruvex (UK) Ltd, Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd, on the following questions:

1. Whether, where citrus fruit originating in one third country has been shipped to another third country, the special requirement that the packaging shall bear an appropriate origin mark pursuant to item 16.1 of Annex IVA of Directive 77/93/EEC, now Directive 2000/29/EC<sup>(1)</sup>, can only be fulfilled in the country of origin or whether it may alternatively be fulfilled in such other third country?
2. Whether the official statement required by items 16.2 to 16.4 of Directive 2000/29/EC as to the country of origin must be made by an official in the country of origin or

whether it may be made by an official in such other third country?

(<sup>1</sup>) Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community OJ L 169, 10.7.2000, p. 1.

### Action brought on 17 April 2002 by the Commission of the European Communities against the Italian Republic

(Case C-143/02)

(2002/C 144/41)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 17 April 2002 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

- declare that, by adopting legislating implementing Directive 92/43/EEC (<sup>1</sup>) which:
  - fails to include within the scope of the laws on the assessment of effects on the environment projects other than those listed in the Italian legislation implementing directives on environmental impact that are nevertheless likely to have a significant effect on sites of Community importance,
  - fails to impose upon the competent Italian authorities any obligation to take appropriate steps in respect of special protection areas to avoid the deterioration of natural habitats and of the habitats of species or disturbance of the species for which the areas were designated, in so far as such disturbance could be significant in relation to the objectives of the directive,

- fails to provide that the conservation measures referred to in Article 6(2) of Directive 92/43 apply to the sites referred to in Article 5(1) of that directive,

has failed to fulfil its obligations under Articles 5, 6 and 7 of Directive 92/43/EEC;

- order the Italian Republic to pay the costs.

#### *Pleas in law and main arguments*

Article 6(3) of the directive provides that any plan or project which, either individually or in combination with other plans or projects, has a significant effect on a site of Community importance falls within the directive's scope. The word 'any' used by the Community legislator leaves no doubt that it refers to all projects, even if not covered by the directives on the assessment of environmental impact and even if not directly connected with or necessary to the management of the site.

However, Article 5(3) of Presidential Decree 357/97 limits the decree's scope to a restricted list of projects expressly mentioned therein so that a whole series of projects of various kinds are excluded even though they are likely to have a significant effect on sites of Community importance.

Under Article 6 of the Italian decree, which transposes Article 7 of the directive, only the obligations arising under Article 4(2) and (3) and Article 5 and not those arising under Article 4(1) of the decree — which transposes Article 6(2) of the directive — apply to special protection areas.

It follows that the Italian legislation at issue imposes no obligation on the competent Italian authorities to take steps, in relation to special protection areas, to avoid the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated.

Lastly, Decree 357/97 wholly fails to transpose the provisions of Article 5(4) of the directive.

The implication of this is that, should the Commission, on finding an omission from the national list of a Member State, initiate a bilateral consultation procedure with that Member State and, failing to resolve the dispute within a period of six months, forward to the Council a proposal relating to the selection of the site in question as a site of Community