

2. Is it of importance as regards the acceptability of discontinuing the procedure that the content of the invitation to tender is defective because of the incorrectness of the assessment previously made by the contracting authority?

(¹) OJ L 199, p. 1.

Reference for a preliminary ruling by the korkein oikeus by order of that Court of 3 July 2002 in the case of Anheuser-Busch, Incorporated against Budějovický Budvar, národní podnik

(Case C-245/02)

(2002/C 219/07)

Reference has been made to the Court of Justice of the European Communities by order of the korkein oikeus (Supreme Court) of 3 July 2002, received at the Court Registry on 5 July 2002, for a preliminary ruling in the case of Anheuser-Busch, Incorporated against Budějovický Budvar, národní podnik on the following questions:

1. If the collision of a trade mark and a sign alleged to infringe it is situated at a point in time before the entry into force of the TRIPS Agreement, do the provisions of the TRIPS Agreement apply to the question of which right has the earlier legal basis, when the alleged infringement of the trade mark is said to continue after the date on which the TRIPS Agreement entered into force in the Community and the Member States?
2. If the answer to Question 1 is affirmative:
 - (a) Can the trade name of an undertaking also act as a sign for goods or services within the meaning of the first sentence of Article 16(1) of the TRIPS Agreement?
 - (b) If the answer to Question 2(a) is affirmative, on what conditions may a trade name be regarded as a sign for goods or services within the meaning of the first sentence of Article 16(1) of the TRIPS Agreement?
3. If the answer to Question 2(a) is affirmative:
 - (a) How is the reference in the third sentence of Article 16(1) of the TRIPS Agreement to existing prior rights to be interpreted? May the right to a trade name also be regarded as an existing prior right within the meaning of the third sentence of Article 16(1) of the TRIPS Agreement?

- (b) If the answer to Question 3(a) is affirmative:

How is the said reference in the third sentence of Article 16(1) of the TRIPS Agreement to existing prior rights to be interpreted in the case of a trade name which is not registered or established in the State in which the trade mark is registered and in which protection is sought for the trade mark against the trade name in question, having regard to the obligation under Article 8 of the Paris Convention to afford protection to a trade name regardless of whether it is registered and to the fact that the permanent appellate body of the WTO has regarded the reference in Article 2(1) of the TRIPS Agreement to Article 8 of the Paris Convention as meaning that WTO members are obliged under the TRIPS Agreement to protect trade names in accordance with the latter article? When assessing, in such a case, whether a trade name has a legal basis prior to a trade mark for the purposes of the third sentence of Article 16(1) of the TRIPS Agreement, may it thus be considered as decisive:

- (i) whether the trade name was well-known at least to some extent among the relevant trade circles, in the State in which the trade mark is registered and in which protection is sought for it, before the point in time at which registration of the trade mark was applied for in the State in question; or
- (ii) whether the trade name was used in commerce directed to the State in which the trade mark is registered and in which protection is sought for it before the point in time at which registration of the trade mark was applied for in the State in question; or
- (iii) what other factor may decide whether the trade name is to be regarded as an existing prior right within the meaning of the third sentence of Article 16(1) of the TRIPS Agreement?

Action brought on 9 July 2002 by Portuguese Republic against Commission of the European Communities

(Case C-249/02)

(2002/C 219/08)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 9 July 2002 by the Portuguese Republic, represented by Luis Fernandes, acting as Agent, and Carlos Botelho Moniz and Eduardo Maia Cadete, lawyers, with an address for service in Luxembourg.