

Judgment of the Court (First Chamber) of 23 March 2006 — Mühlhens GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Zirh International Corp.

(Case C-206/04 P) ⁽¹⁾

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Word mark ZIRH — Opposition by the proprietor of the Community trade mark SIR)

(2006/C 131/22)

Language of the case: English

Parties

Appellant: Mühlhens GmbH & Co. KG (represented by: T. Schulte-Beckhausen and C. Musiol, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen and A. von Mühlendahl, Agents)

Intervener: Zirh International Corp., (represented by L. Kouker)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 3 March 2004 in Case T-355/02 Mühlhens v OHIM, by which it dismissed an action for annulment of the rejection of the opposition by the proprietor of an earlier mark to the registration of a trade mark — Similarity of the marks — Art. 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders Mühlhens GmbH & Co. KG to pay the costs.

⁽¹⁾ OJ C 179, 10.07.2004.

Judgment of the Court (Second Chamber) of 23 March 2006 — Commission of the European Communities v Republic of Austria

(Case C-209/04) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Corncrake — Special protection area in the Lauteracher Ried national nature reserve — Exclusion of the Soren and Gleggen-Köblern sites — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Procedure for a construction plan or project — Procedure for determining the road line of a dual carriageway — Procedure for environmental impact study — Procedural breaches relating to the project for the construction of the federal S 18 dual carriageway in Austria — Temporal application of Directive 92/43)

(2006/C 131/23)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and B. Schima, agents)

Defendant: Republic of Austria (represented by: E. Riedl, J. Müller and K. Humer, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and Article 6(4) in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Drawing of the boundaries of the special protection area 'Lauteracher Ried' on the basis of inaccurate scientific criteria, wrongly excluding the two sites 'Soren' and 'Gleggen-Köblern', which are important for the protection of the corncrake (*Crex crex*) and other migratory birds nesting in the meadows — Authorisation of a road-construction project likely to affect that area, without complying with the obligations under Article 6(4) of Directive 92/43/EEC.

Operative part of the judgment

1. Declares that, by failing to include in the special protection area at the Lauteracher Ried national nature reserve the Soren and Gleggen-Köblern sites which, according to scientific criteria, are, together with that special protection area, among the most suitable territories in number and size for the purposes of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997, the Republic of Austria has failed to fulfil its obligations under those provisions of that directive;

2. Dismisses the remainder of the action;
3. Orders the Commission of the European Communities and the Republic of Austria to bear their own costs.

(¹) OJ C 179, 10.04.2004.

Judgment of the Court (Second Chamber) of 23 March 2006 (reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy)) — Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v FCE Bank plc

(Case C-210/04) (¹)

(Sixth VAT Directive — Articles 2 and 9 — Fixed establishment — Non-resident company — Legal relationship — Cost-sharing agreement — OECD Convention on double taxation — Meaning of 'taxable person' — Supply of services effected for consideration — Administrative practice)

(2006/C 131/24)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Defendant: FCE Bank plc

Re:

Reference for a preliminary ruling — Corte Suprema di Cassazione — Interpretation of Articles 2(1) and 9(1) of the Sixth VAT Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Subsidiary, organised as a producer unit of a company established in another Member State — Whether the branch can be considered an independent

person and the 'arm's length' standard laid down in the OECD model Convention on double taxation can be applied

Operative part of the judgment

Articles 2(1) and 9(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as meaning that a fixed establishment, which is not a legal entity distinct from the company of which it forms part, established in another Member State and to which the company supplies services, should not be treated as a taxable person by reason of the costs imputed to it in respect of those supplies.

(¹) OJ C 190, 24.07.2004.

Judgment of the Court (First Chamber) of 16 March 2006 (reference for a preliminary ruling of Landesgericht Innsbruck (Austria)) — Rosmarie Kapferer v Schlank & Schick GmbH

(Case C-234/04) (¹)

(Jurisdiction in civil matters — Regulation (EC) No 44/2001 — Interpretation of Article 15 — Jurisdiction over consumer contracts — Prize notification — Misleading advertising — Judgment on jurisdiction — Res judicata — Review on appeal — Legal certainty — Primacy of Community law — Article 10 EC)

(2006/C 131/25)

Language of the case: German

Referring court

Landesgericht Innsbruck (Austria)

Parties to the main proceedings

Applicant: Rosmarie Kapferer

Defendant: Schlank & Schick GmbH