

Appeal brought on 1 June 2006 by Saiwa s.p.a. against the judgement of the Court of First Instance (First Chamber) delivered on 5 April 2006 in Case T-344/03 Saiwa s.p.a. v Office for Harmonisation in the Internal Market (OHIM) and Barilla Alimentare s.p.a.

(Case C-245/06 P)

(2006/C 178/41)

Language of the case: Italian

Parties

Appellant: Saiwa s.p.a. (represented by: G. Sena, P. Tarchini, J.-P. Karsenty, M. Karsenty-Ricard, lawyers)

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

Form of order sought

- Set aside the judgement under appeal.
- Grant the form of order sought at first instance, and therefore annul, for infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾, the decision of the Fourth Board of Appeal of the OHIM of 18 July 2003 in Case R 480/2002-4 and the rejection of the application for registration of Barilla Alimentare s.p.a. No 289.405.
- Order the OHIM and Barilla Alimentare s.p.a. to pay the costs of all of the proceedings

Pleas in law and main arguments

The applicant puts forward a single ground for annulment based on infringement of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark. The applicant claims that the expression 'ORO' (of which the trade mark which is the subject of the dispute consists, or which in any case forms part thereof) has inherent distinctive character; that with reference to the international mark (which is also the subject of the present dispute) part of the relevant public is unaware of the meaning of the word 'ORO' and that this is common knowledge and does not have to be proved by the parties; that having regard to the principle of interdependence, given the identity of the goods covered and signs in question, it is sufficient that the earlier sign has only weak distinctiveness.

The applicant submits moreover that the distinctive character of the word 'ORO' is reinforced and/or acquired through use, with regard to both the trade mark 'ORO' and the trade mark 'ORO SAIWA'.

The applicant finally submits that the trade marks 'ORO' and 'ORO SAIWA' on the one hand, and 'Selezione ORO BARILLA' on the other hand, are likely to be confused and that in any case there is a likelihood of association between them.

⁽¹⁾ OJ L 22, p. 50.

Action brought on 2 June 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-248/06)

(2006/C 178/42)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and L. Escobar Guerrero, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

- declare that, by maintaining in force rules for the deduction of costs in respect of research and development and technological innovation carried out abroad which is more onerous than the rules applicable to costs incurred in Spain, as amended by Article 35 of the Law on corporation tax, approved by Royal Legislative Decree 4/2004 of 5 March, the Kingdom of Spain has failed to fulfil its obligations under Articles 43 and 49 of the EC Treaty on freedom of establishment and freedom to provide services, and the corresponding articles in the Agreement on the European Economic Area;
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Infringement of freedom of establishment (Articles 43 and 48 EC and Article 31 EEA): the territorial restriction, which consists of the fact that only expenses incurred in respect of R&D and IT activities actually carried out in Spain may benefit from the deduction of the corporation tax allowance, is a factor which restricts the freedom of establishment of Spanish companies which invest in R&D and IT outside Spain, benefiting companies making the same investment in Spain, in particular, undertakings which have their main office in another Member State and which operate in Spain via a secondary establishment.

Infringement of the freedom to provide services (Articles 49 EC and 36 EEA): the costs of R&D and IT activities subcontracted outside Spain are not eligible for the deduction of the corporation tax allowance. That limitation constitutes an obstacle to the freedom to provide services, provided for in the EC Treaty.

Action brought on 2 June 2006 — Commission of the European Communities v Kingdom of Sweden**(Case C-249/06)**

(2006/C 178/43)

*Language of the case: Swedish***Parties**

Applicant: Commission of the European Communities (represented by: C. Tufvesson, B. Martenczuk and H. Stølvbæk, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to take appropriate steps to eliminate the incompatibilities between Sweden's bilateral investment agreement with the Socialist Republic of Vietnam, together with 16 further bilateral investment agreements, and the EC Treaty, the Kingdom of Sweden has failed to fulfil its obligations under the second paragraph of Article 307 EC;

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The agreements are incompatible with Community law since they do not permit the application of Community measures based in Articles 57(2) EC, 59 EC and 60 EC. Further, Sweden has not taken steps to rectify the situation. Thus Sweden has failed to fulfil its obligations under the second paragraph of Article 307 EC to take all appropriate steps to eliminate all incompatibilities between the Treaty and the investment agreements.

Action brought on 6 June 2006 — Commission of the European Communities v Federal Republic of Germany**(Case C-252/06)**

(2006/C 178/44)

*Language of the case: German***Parties**

Applicant: Commission of the European Communities (represented by: G. Braun and N. Yerrell)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Directive 2002/92/EC⁽¹⁾ of the European Parliament and of the Council of 9 December 2002 on insurance mediation, or, in any event, by not communicating these provisions to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

— Order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The period for implementing the Directive expired on 15 January 2005.

⁽¹⁾ OJ L 9, 2003, p. 3.