

Appeal brought on 2 October 2006 by Miguel Torres S.A against the judgment of the Court of First Instance (Second Chamber) delivered on 11 July 2006 in Case T-247/03 Miguel Torres S.A v OHIM and Bodegas Muga S.A.

(Case C-405/06 P)

(2006/C 310/10)

Language of the case: Spanish

Parties

Appellant: Miguel Torres S.A (represented by: E. Armijo Chávarri, M. A. Baz de San Ceferino and A. Castán Pérez Gómez, abogados)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Bodegas Muga S.A.

Form of order sought

- annul the judgment under appeal in so far as it dismisses the action for annulment brought against the contested decision;
- annul the contested decision in so far as it was not annulled by the judgment under appeal; and
- order OHIM to pay the costs.

Pleas in law and main arguments

1. Infringement of the rights of defence of Miguel Torres S.A., by reason of the fact that the judgment under appeal dismissed the first of the pleas in law in the action for annulment before the Court of First Instance based on the infringement of the appellant's rights of defence. The refusal by the First Board of Appeal of OHIM to accept the documents produced by Miguel Torres S.A. and its statement of grounds for the appeal, of 25 January 2002, which sought to prove that the mark TORRES is well known throughout the EU is, in the appellant's view, a substantive irregularity on the basis of which the Court of First Instance should have annulled the contested decision. By failing to do so the Court of First Instance also infringed the appellant's rights of defence, undermining the principle of functional continuity and Article 8(1)(b) of the Regulation on the Community trade mark. ⁽¹⁾
2. Infringement of Article 8(1)(b) of the Regulation on the Community trade mark on account of incorrect interpretation of that provision by the Court of First Instance. The application by the Court of First Instance of that principle contains an error of law because of incorrect application of the criterion of the perception of the relevant public for the purpose of the assessment of the likelihood of confusion

between the two conflicting marks. The appellant submits that the Court of First Instance does not take as its starting point the test relating to the perception of the average European consumer, but with the test relating to the perception of the Spanish, Portuguese and Italian consumer.

⁽¹⁾ 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 from the Bundesfinanzhof (Germany) lodged on 5 October 2006 — Landesanstalt für Landwirtschaft, Abteilung Förderwesen und Fachrecht v Franz Götz

(Case C-408/06)

(2006/C 310/11)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties to the main proceedings

Applicant: Landesanstalt für Landwirtschaft, Abteilung Förderwesen und Fachrecht

Defendant: Franz Götz

Questions referred

1. Is a 'Milchquoten-Verkaufsstelle' (milk-quota sales point) set up by a German *Land* which transfers delivery reference quantities to milk producers for consideration
 - a) an agricultural intervention agency within the meaning of the third subparagraph of Article 4(5) of and Annex D (7) to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes ⁽¹⁾ ('the Sixth Directive') which carries out transactions in respect of agricultural products pursuant to regulations on the common organisation of the market in these products, or
 - b) a *Verkaufsstelle* (staff shop) within the meaning of the third subparagraph of Article 4(5) of and Annex D (12) of the Sixth Directive?