

Re:

Reference for a preliminary ruling — Högsta Domstolen — Interpretation of Article 98(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Obligation of a Community trade mark court which finds that the defendant has infringed or threatens to infringe a Community trade mark, to issue, save where there are specific reasons for not doing so, an order prohibiting him from further infringements or threats to infringe — National legislation already containing a general prohibition of infringement and providing for penalties in the case of further such acts

Judgment of the Court (Fifth Chamber) of 16 November 2006 — Commission of the European Communities v Kingdom of Spain

(Case C-357/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 2003/55/EC — Internal market in natural gas — Failure to transpose within the prescribed period)

(2006/C 331/25)

Language of the case: Spanish

Operative part of the judgment

1. Article 98(1) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark is to be interpreted as meaning that the mere fact that the risk of further infringement or threatened infringement of a Community trade mark is not obvious or is otherwise merely limited does not constitute a special reason for a Community trade mark court not to issue an order prohibiting the defendant from proceeding with those acts.
2. Article 98(1) of Regulation No 40/94 is to be interpreted as meaning that the fact that the national law includes a general prohibition of the infringement of Community trade marks and provides for the possibility of penalising further infringement or threatened infringement, whether intentional or due to gross negligence, does not constitute a special reason for a Community trade mark court not to issue an order prohibiting the defendant from proceeding with those acts.
3. Article 98(1) of Regulation No 40/94 is to be interpreted as meaning that a Community trade mark court which has issued an order prohibiting the defendant from proceeding with infringement or threatened infringement of a Community trade mark is required to take such measures, in accordance with its national law, as are aimed at ensuring that that prohibition is complied with, even if the national law includes a general prohibition of infringement of Community trade marks and provides for the possibility of penalising further infringement or threatened infringement, whether intentional or due to gross negligence.
4. Article 98(1) of Regulation 40/94 is to be interpreted as meaning that a Community trade mark court which has issued an order prohibiting the defendant from proceeding with infringement or threatened infringement of a Community trade mark is required to take, from among the measures provided for under national law, such as are aimed at ensuring that that prohibition is complied with, even if those measures could not, under that law, be taken in the case of a corresponding infringement of a national trade mark.

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and S. Pardo Quintillán, Agents)

Defendant: Kingdom of Spain (represented by: F. Díez Moreno, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57)

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, the Kingdom of Spain has failed to fulfil its obligations under that directive.
2. Orders the Kingdom of Spain to pay the costs.

⁽¹⁾ OJ C 257, 15.10.2005.

⁽¹⁾ OJ C 281, 12.11.2005.