

Reference for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 27 November 2006 — BVBA Van Landeghem v Belgian State

(Case C-486/06)

(2007/C 20/17)

*Language of the case: Dutch*

Appeal brought on 27 November 2006 by L & D S.A. against the judgment of the Court of First Instance (Fourth Chamber) delivered on 7 September 2006 in Case T-168/04 L & D S.A. v OHIM

(Case C-488/06 P)

(2007/C 20/18)

*Language of the case: Spanish*

## Referring court

Hof van beroep te Antwerpen

## Parties to the main proceedings

*Applicant:* BVBA Van Landeghem

*Defendant:* Belgian State

## Question referred

‘Should pick-ups — that is to say, motor vehicles consisting, on the one hand, of an enclosed cabin for use as a passenger compartment, there being behind the driver's seat folding or removable seats with three-point safety belts, and, on the other hand, of a load space which is separated from the cabin, is not higher than 50 centimetres, can be opened only at the rear and has no facilities for attaching a load — which were equipped with a highly luxurious, full-option interior (including electrically adjustable seats, leather seats, electrically operated mirrors and windows, a stereo with a CD player, etc.), an ABS braking system, an automatic, 4 to 8-litre, very high fuel-consumption engine, four-wheel drive and luxurious (sports) rims, be classified, if put into circulation and released for home use in the period between 10 April 1995 and 4 December 1997, under heading 87.03 of the then applicable combined nomenclature (originally introduced by Council Regulation (EEC) No 2658/87 <sup>(1)</sup> of 23 July 1987 on the tariff and statistical nomenclature), as motor cars and other motor vehicles, principally designed for the transport of persons (other than those of heading No 87.02), including motor vehicles of the “station wagon” or “break” type and racing cars, or under heading 87.04 of the then applicable combined nomenclature as motor vehicles for the transport of goods, or under a heading other than headings 87.03 or 87.04 of the then applicable combined nomenclature?’

<sup>(1)</sup> OJ L 256, p. 1.

## Parties

*Appellant:* L & D S.A. (represented by: S. Miralles Miravet, abogado)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Julios Sämann Ltd

## Form of order sought

- set aside the judgment of the Court of First Instance in its entirety
- annul paragraphs 1 and 3 of the decision of the Second Board of Appeal of OHIM of 15 March 2004, in so far as it (1) partially annuls the decision of the Opposition Division and refuses registration of the mark applied for in respect of goods in Classes 3 and 5, and, (2) orders each one of the parties to bear the costs that they incurred in the opposition proceedings and the appeal;
- order OHIM to pay all the costs.

## Pleas in law and main arguments

Infringement of Article 8(1)(b) of Regulation No 40/94 <sup>(1)</sup>.

The Court of First Instance infringed Article 8(1)(b) of Regulation No 40/94 by concluding: (i) that the earlier Community mark No 91.991 had acquired a distinctive character; (ii) that the figurative mark with the verbal element ‘Aire Limpio’ No 252.288 and the earlier Community figurative mark No 91.991 were similar; and, (iii) that there was a likelihood of confusion.

Infringement of Article 73 of Regulation No 40/94