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

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 ([1]) 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?'

([1]) OJ L 256, p. 1.

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

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 ([1]).

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

The Opposition Division of OHIM (decision of 25 February 2003) and the Board of Appeal (decision of 15 March 2004) confined their examination to the mark whose registration is sought ('Aire Limpio' No 252.288) and the earlier Community mark No 91.991. However, the Court of First Instance relied on documents related to other marks, particularly in relation to international mark No 328.915 'ARBRE MAGIQUE'. As a consequence, the grounds of the judgment under appeal refer to a mark that even the applicant excluded from the comparative analysis in order to determine the existence of a likelihood of confusion. By so doing, the applicant was unable to present its case properly in respect of the arguments and information relating to other marks other than Community trade mark No 91.991, on which is based the error in the judgment under appeal of the Court of First Instance.

(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 Consiglio di Stato (Italy) lodged on 28 November 2006 — Consorzio Elisoccorso San Raffaele v Elilombarda s.r.l.

(Case C-492/06)

(2007/C 20/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Consorzio Elisoccorso San Raffaele

Defendant: Elilombarda s.r.l.

Question referred

Where a consortium without legal personality has participated as such in a procedure for the award of a public contract and has not been awarded that contract, is Article 1 of Council Directive 89/665/EEC (1) of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC (2) of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, to be interpreted as precluding the possibility under national law for an individual member of that consortium to bring an action against the decision awarding the contract?

(1) OJ 1989 L 395, p. 33.
(2) OJ 1992 L 209, p. 1.

Appeal brought on 30 November 2006 by Commission of the European Communities against the judgment of the Court of First Instance (Second Chamber) delivered on 6 September 2006 in Case T-304/04 Commission of the European Communities v Italian Republic, Wam SpA

(Case C-494/06 P)

(2007/C 20/20)

Language of the case: Italian

Parties

Appellant: Commission of the European Communities (represented by: V. Di Bucci and E. Righini, Agents)

Other parties to the proceedings: Italian Republic, Wam SpA

Forms of order sought

— Set aside the judgment of the Court of First Instance of the European Communities of 6 September 2006 in Joined Cases T-304/04 and T-316/04 *Italian Republic and Wam SpA* v *Commission of the European Communities* and, in so doing,

— give a final ruling on the dispute and dismiss the action as unfounded;

— in the alternative, refer the case back to the Court of First Instance for a new ruling;

— order the Italian Republic and Wam SpA to pay the costs of the proceedings, together with the costs of the proceedings at first instance.