Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Seat SA (Barcelona, Spain)

Form of order sought

— the decision of the first Board of Appeal dated 7 September 2006 in Case R 960/2005-1 shall be annulled;

— the Office and other parties to the procedure shall bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: the Community word mark 'MAGIC SEAT' for goods and services in class 12 — vehicle seats and vehicle seat mechanisms, parts and fittings and accessories for these goods — application No 2 503 902

Proprietor of the mark or sign cited in the opposition proceedings: SEAT SA

Mark or sign cited: the national figurative mark 'SEAT' for goods and services in class 12

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94

In support of its submissions, the applicant claims that the Board of Appeal erred in its approach to the visual analysis, in effect conferring word-only protection on a composite earlier mark that contained a large and striking device element.

According to the applicant, the Board of Appeal's phonetic comparison of the marks was allegedly flawed in two respects. First, it failed to appreciate that the word MAGIC in MAGIC SEAT would not be pronounced as a Spanish word and hence the mark as a whole, MAGIC SEAT, would not be pronounced in a Spanish way either. Secondly, it failed to take into account the fact that MAGIC was the first word of the two-word mark, MAGIC SEAT.

Moreover, the Board of appeal failed to apply the 'rule of counteraction' in the current case and therefore failed to take into account the fact, as part of the conceptual analysis, that the earlier Spanish mark, comprising the word SEAT and the large 'S' badge device element, would be immediately and clearly understood as designating the Spanish carmaker whereas the mark MAGIC SEAT would not be understood so.

In addition, on the question of conceptual dissimilarity, the applicant contends that the Board failed to take into any account the linguistic evidence supplied by the applicant as to how Spanish consumers were likely to see the words MAGIC SEAT.

Furthermore, the applicant claims that the Board failed to appreciate that the category of goods, the features of the relevant market and the attributes of the national consumer for these goods militated against any finding of a likelihood of confusion.

Finally, the applicant considers that the Board failed to take into account whatsoever the applicant's evidence from the trade as to how products of this sort are marketed.

Action brought on 6 December 2006 — Xinhui Alida Polythene v Council

(Case T-364/06)

(2007/C 20/43)

Language of the case: English

Parties

Applicant: Xinhui Alida Polythene Ltd (Xinhui, China) (represented by: C. Munro, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annulment, pursuant to Article 230 of the Treaty of the European Union, of Council Regulation 1425/2006 of 25 September 2006 imposing a definitive anti-dumping duty on imports of certain plastic sacks and bags originating in the People's Republic of China and Thailand, and terminating the proceeding on imports of certain plastic sacks and bags originating in Malaysia; and

— order the Council to pay the costs of the appellant in the present proceedings.

Pleas in law and main arguments

The applicant seeks the annulment of Council Regulation (EC) No 1425/2006 of 25 September 2006 imposing a definitive anti-dumping duty on imports of certain plastic sacks and bags originating in the People's Republic of China and Thailand, and terminating the proceeding on imports of certain plastic sacks and bags originating in Malaysia ([1]).

The applicant contends that the Council has infringed essential procedural requirements and misused its powers by adopting the contested regulation without properly considering the underlying proceedings conducted by the Commission.

According to the applicant, the Commission i) did not properly examine the standing of the complainants and/or failed to make a proper determination of their standing, ii) considered irrelevant information and/or failed to take available information into account, iii) made an inadequate assessment of the injury to the relevant Community industry, iv) failed to establish that there was a Community interest in imposing duties on imports, and v) infringed the applicant's rights of defence.

The applicant alleges that this amounts to an abuse of powers.

([1]) OJ 2006 L 270, p. 4.

Action brought on 4 December 2006 — Calebus v Commission

(Case T-366/06)

(2007/C 20/44)

Language of the case: Spanish

Parties

Applicant: Calebus, S.A. (Almería, Spain) (represented by: R. Bocanegra Sierra, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision 2006/613/EC of 19 July 2006 (OJ 2006 L 259, p.1) approving the list of sites of Community importance for the Mediterranean biogeographical region, in relation to the inclusion of the farm 'Las Cuerdas' as a SCI 'ES6110006 Ramblas de Gergal, Tabernas y Sur de Sierra Alhamilla', appearing on that list, and order the Commission to change the delimitation of that SCI so as to exclude the farm referred to.

Pleas in law and main arguments

In support of its claims, the applicant submits that the contested decision is:

— contrary to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ([1]) in so far as it includes some areas of the appellant's property in SCI ES 6110006 which lack the necessary environmental requirements; and

— arbitrary, in that it has excluded, in that same zone, areas which have the required environmental values which call for classification as a SCI.

([1]) OJ L 206, 22.7.1992, p. 7

Action brought on 4 December 2006 — Kuwait Petroleum Corp. and others v Commission

(Case T-370/06)

(2007/C 20/45)

Language of the case: English

Parties

Applicants: Kuwait Petroleum Corp. (Shuwaikh, Kuwait), Kuwait Petroleum International Ltd (Woking, United Kingdom), and Kuwait Petroleum (Nederland) BV (Rotterdam, The Netherlands) (represented by: D.W. Hull, Dr. G. M. Berrisch, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission's Decision C(2006)4090 of 13 September 2006 insofar as it applies to the applicants; in the alternative

— reduce the amount of the fine imposed;

— in any event, order the Commission to bear the costs of these proceedings.

Pleas in law and main arguments

By a decision adopted on 13 September 2006 (the 'contested decision'), the Commission imposed on Kuwait Petroleum Corp. ('KPC'), Kuwait Petroleum International Ltd ('KPI') and Kuwait Petroleum (Nederland) BV ('KPN'), the applicants, jointly and severally, a fine of EUR 16.632 million for infringing Article 81 EC by fixing prices in the Dutch bitumen market. Each of the applicants hereby seeks the annulment of the contested decision or, in the alternative, a reduction of the fine on the following grounds: