

expressly distinguishes between these two situations and limits the exclusion of compensation in relation to those persons (including the driver) in the vehicle that **caused the damage or injury**.

Appeal brought on 23 April 2007 by Indorata-Serviços e Gestão, Lda against the judgment delivered on 15 February 2007 in Case T-204/04 Indorata-Serviços e Gestão, Lda v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-212/07 P)

(2007/C 155/22)

Language of the case: German

Parties

Appellant: Indorata-Serviços e Gestão, Lda (represented by: T. Wallentin, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

- set aside the judgment of the Court of First Instance of 15 February 2007 in Case T-204/04 ⁽¹⁾;
- order the respondent to pay the costs.

Pleas in law and main arguments

The appellant argues four grounds in support of its appeal against the above judgment of the Court of First Instance.

By its first ground of appeal, the appellant relies on infringement of Article 7(1)(b) of Regulation No 40/94. Contrary to the observations of the Court, the term HAIRTRANSFER is capable of registration since its fanciful nature gives it distinctive character and is therefore capable of distinguishing the goods and services of the appellant from those of other undertakings.

By its second ground of appeal, the appellant relies on infringement of Article 7(1)(c) of Regulation No 40/94. By its finding that the sign HAIRTRANSFER in respect of the goods applied for in Class 8 has a sufficiently direct and genuine link to the goods concerned and that the sign HAIRTRANSFER indicates

the intended purpose of the goods in Class 22 to the relevant public, and therefore in its entirety also shows a sufficiently direct and genuine link to the goods concerned in Class 22, the Court of First Instance misinterpreted and misapplied the provision at issue. In addition, HAIRTRANSFER cannot be descriptive in respect of the rejected goods per se, since an 'exclusively descriptive' function of goods is not appropriate for services (!)

By its third ground of appeal, the appellant relies on breach of the principle of equal treatment. Signs which are definitely similar to the set of words at issue have been the subject of decisions of OHIM on the registration of Community trade marks. The appellant stated in the proceedings before the Court of First Instance that the sign in the present case has distinctive character also on account of the settled practice of OHIM, the Austrian Patent Office and the Patent Offices of numerous Member States.

Finally, by its fourth ground of appeal, the appellant relies on breach of general principles of EC law. The judgement of the Court of First Instance under appeal infringes the requirement of objectivity and the principle of coherence in decision-making, inasmuch as within one and the same application for a Community trade mark registration a distinction is made which cannot be objectively applied. It is quite evident that 'hair thickening' in Class 44 and rejected by the Office is included in hair lengthening. Registration of the sign HAIRTRANSFER in respect of 'hair lengthening' and rejection in respect of 'hair thickening' is therefore objectively unjustified.

⁽¹⁾ OJ C 82 of 14.4.2007, p. 32.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 24 April 2007 — Verlag Schawe GmbH v Sächsisches Druck- und Verlagshaus AG

(Case C-215/07)

(2007/C 155/23)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Verlag Schawe GmbH

Defendant: Sächsisches Druck- und Verlagshaus AG

Questions referred

1. Do Article 7(1) and (5) and Article 9 of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ⁽¹⁾ prohibit a legal provision of a Member State, according to which an official database which is published as a matter of general information for official purposes (in this instance: a systematic and complete collection of all calls for tender documents emanating from a German *Land*) does not benefit from *sui generis* protection under the directive?
2. If the answer to Question 1 is in the negative: is this also the case where the database is constructed not by a public body but by a private undertaking on its behalf, to which all bodies of this *Land* issuing calls for tender must directly submit their calls for tender documents for publication?

⁽¹⁾ OJ 1996 L 77, p. 20.

Action brought on 25 April 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-217/07)

(2007/C 155/24)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: W. Wils and P. Dejmek, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

- declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/49/EC of the European Parliament and of the Council of 29 April 2004 on safety on the Community's railways and amending Council Directive 95/18/EC on the licensing of railway undertakings and Directive 2001/14/EC on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification ⁽¹⁾,

and with

Directive 2004/50/EC of the European Parliament and of the Council of 29 April 2004 amending Council Directive 96/48/EC on the interoperability of the trans-European high-speed rail system and Directive 2001/16/EC of the European Parliament and of the Council on the interoperability of the trans-European conventional rail system ⁽²⁾,

or in any event by not communicating such measures to the Commission, the Netherlands has failed to fulfil its obligations under those directives;

- order that the Kingdom of the Netherlands pay the costs.

Pleas in law and main arguments

The period prescribed for transposing those directives into national law expired on 30 April 2006.

⁽¹⁾ OJ L 164, 30.4.2004, p. 44.

⁽²⁾ OJ L 164, 30.4.2004, p. 114.

Reference for a preliminary ruling from the Raad van State (Belgium) lodged on 27 April 2007 — VZW de Nationale Raad van Dierenkwekers en Liefhebbers and VZW Andibel v Belgische Staat

(Case C-219/07)

(2007/C 155/25)

Language of the case: Dutch

Referring court

Raad van State (Belgium)

Parties to the main proceedings

Applicants: VZW de Nationale Raad van Dierenkwekers en Liefhebbers and VZW Andibel

Defendant: Belgische Staat

Questions referred

1. Must Article 30 of the Treaty of 25 March 1957 establishing the European Community, in itself or in conjunction with Council Regulation (EC) No 338/97 ⁽¹⁾ of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, be interpreted as meaning that a prohibition on the import of or trade in fauna, imposed in implementation of Article 3bis(1) of the Law of 4 August 1986 on the protection and welfare of animals (Wet betreffende de bescherming en het welzijn der dieren), is not justified in