

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 22 June 2007 — Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V. v deutsche internet versicherung AG

(Case C-298/07)

(2007/C 223/03)

*Language of the case: German***Referring court**

Bundesgerichtshof

Parties to the main proceedings

Applicant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V.

Defendant: deutsche internet versicherung AG

Questions referred

1. Is a service provider required under Article 5(1)(c) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ⁽¹⁾ to provide a telephone number before entering into a contract with a user of the service, so that he can be contacted rapidly and communicated with in a direct and effective manner?

2. If the answer to Question 1 is negative:

- (a) Is a service provider required under Article 5(1)(c) of the directive to offer a second means of communication, in addition to indicating his electronic mail address, prior to entering into a contract with a user of the service?
- (b) If the answer is positive: Does it suffice, for the purposes of a second means of communication, that the service provider installs an enquiry mask enabling the user to consult the service provider via the Internet, the user's enquiry then being answered by the service provider by means of electronic mail?

⁽¹⁾ OJ L 178, p. 1.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 26 June 2007 — PAGO International GmbH v Tirolmilch registrierte Genossenschaft mbH

(Case C-301/07)

(2007/C 223/04)

*Language of the case: German***Referring court**

Oberster Gerichtshof

Parties to the main proceedings

Applicant: PAGO International GmbH

Defendant: Tirolmilch registrierte Genossenschaft mbH

Questions referred

1. Is a Community trade mark protected in the whole of the Community as a 'trade mark with a reputation' for the purposes of Article 9(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ⁽¹⁾ (Regulation 40/94) if it has a 'reputation' only in one Member State?
2. If the answer to the first question is in the negative: is a mark which has a 'reputation' only in one Member State protected in that Member State under Article 9(1)(c) of Regulation 40/94, so that a prohibition limited to that Member State may be issued?

⁽¹⁾ OJ 1994 L 11, p. 1.

Appeal brought on 12 July 2007 by Papierfabrik August Koehler AG against the judgment of the Court of First Instance (Fifth Chamber) of 26 April 2007 in Joined Cases T-109/02 *Bolloré v Commission*, T-118/02 *Arjo Wiggins Appleton v Commission*, T-122/02 *Mitsubishi HiTec Paper Bielefeld v Commission*, T-125/02 *Papierfabrik August Koehler v Commission*, T-126/02 *M-real Zanders v Commission*, T-128/02 *Papeteries Mougeot v Commission*, T-129/02 *Torraspapel v Commission*, T-132/02 *Distribuidora Vizcaína de Papeles v Commission*, and T-136/02 *Papelera Guipuzcoana de Zicuñaga v Commission*

(Case C-322/07 P)

(2007/C 223/05)

Language of the case: German

Parties

Appellant: Papierfabrik August Koehler AG (represented by: I. Brinker, S. Hirsbrunner, lawyers, J. Schwarze, University Professor)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- Annulment of the judgment of the Court of First Instance (Fifth Chamber) of 26 April 2007 (Case T-125/02) in so far as it affects the appellant;

- Annulment of Commission Decision 2004/337/EC of 20 December 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/36.212 — Carbonless paper) ⁽¹⁾ in so far as it affects the appellant;

In the alternative: a reduction of the fine imposed on the appellant in Article 3 of that decision;

- In the alternative to the second indent above: referral of the matter back to the Court of First Instance for determination in accordance with the judgment of the Court of Justice;

- In any event, an order for the Commission to pay the costs incurred by the appellant both before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The appellant raises the following pleas: the Court of First Instance's reasoning in relation to the setting of the amount of the fine infringes both the principles of equal treatment and proportionality. The appellant thus claims that substantive Community law has been infringed. The Court erroneously assumed it to be insignificant that the appellant is a family business and, in comparison with the other undertakings, does not have direct access to capital markets. Instead the Court wrongly pointed out that an undertaking cannot rely to its advantage on an infringement of law which was committed to the benefit of other undertakings. However, the appellant did not rely on that argument in any way. The Court did not appropriately assess the structural differences between the appellant and the other undertakings which are accused of committing an infringement. The Court thereby infringed the principles of equal treatment and proportionality.

Moreover, the Court wrongly assumed that the appellant was a party to the infringement in the period prior to October 1993. In that regard, the Court gave insufficient proof, assessed that proof contradictorily and, moreover, falsified it. It also infringed the presumption of innocence and the appellant's rights of defence. The appellant thus claims that there was a procedural error. The Court's reasoning for its finding that the official meetings of the AEMCP association between January 1992 and September 1993 served as a setting for fixing prices on the European market is insufficient and contradictory. Furthermore, the appellant alleges that the Court committed legal errors in assuming that the appellant participated in unofficial meetings, in which prices at national level were discussed.

⁽¹⁾ OJ 2004 L 115, p. 1.