THIRD PLEA OF ILLEGALITY: The appellants submit that, in so far as it found that the letter of 29 May 2000 does not contain an untruth, the judgment under appeal (at paragraphs 50 and 51) is vitiated by an error in the interpretation of that letter and by distortion of the facts and should be set aside. The appellants also seek the rejection on its merits of the Commission's counterclaim, which seeks the removal from the text of the applications the appellants' allegation that the Commission told an ideologically motivated untruth in drafting the letter of 29 May 2000 in such a way as to give the impression that it was the Italian authorities which had failed even to mention at the meeting held on 16 May 2000 the existence of undertakings within the category of the third tender procedure

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Appeal brought on 23 February 2009 by Volker Mergel, Klaus Kampfenkel, Burkart Bill and Andreas Herden against the judgment of the Court of First Instance (Second Chamber) delivered on 16 December 2008 in Case T-335/07 Volker Merkel and Others v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-80/09 P)

(2009/C 90/29)

Language of the case: German

Parties

Appellants: Volker Mergel, Klaus Kampfenkel, Burkart Bill and Andreas Herden (represented by: G.P. Friderichs, Rechtsanwalt)

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

Form of order sought

— set aside the judgment of the Court of First Instance (Second Chamber) of 16 December 2008 in Case T-335/07, which was served upon the appellants by fax on 18 December 2008;

— annul the decision of the Fourth Board of Appeal of OHIM of 25 June 2007 (Case R0299/2007-4);

— order the respondent to pay the costs.

Pleas in law and main arguments

The subject-matter of the proceedings is the question whether the term 'Patentconsult' for services in Classes 35, 41 and 42 can benefit from protection as a trade mark. The Court of First Instance considered that the term 'Patentconsult' was an indication serving to designate the service at issue in a direct and concrete manner.

The appeal is based on the wrong interpretation and application of Article 7(1)(b) and (c) of Regulation No 40/94.

By its first plea, the appellants claim that the Court committed an error of law in classifying the trade mark at issue as a neologism that was not noticeably different from the sum of its descriptive elements. According to the appellant, the Court found that the mark at issue was not noticeably different on the ground that the mark 'Patentconsult' followed the structure commonly used for similar designations such as 'patent consulting' or 'patent consultancy'. However, that classification was wrong, precisely because 'Patentconsult' did not follow the common — namely grammatically correct — structure, but diverged from it and accordingly represented a striking neologism that was noticeably different from the mere sum of the elements 'patent' and 'consult'.

By its second plea, the appellant claims that the Court wrongly assessed the exclusively descriptive character of the mark 'Patentconsult'. The Court considered that, in respect of that descriptive character, it was immaterial whether other terms could be used for the protected services. However, the appellants take the view that it is precisely in order to be able to claim that there is a 'need to leave free' ('Freihaltebedürfnis'), that a term other than 'Patentconsult' must be used. It is precisely the grammatically incorrect term 'Patentconsult' which is not suitable.

Finally, by its third plea, the appellant claims that the Court was wrong to consider that the respondent's earlier decision concerning the mark 'Netmeeting' and the judgment of the Court of Justice in Case C-383/99 P concerning the mark 'Baby-dry' were not relevant. According to the judgment in Case C-383/99 P, a perceptible difference to the terms used in the common parlance of the relevant class of consumers is apt to confer distinctive character. That case-law has to be followed, in order to guarantee consistency and the reliability of decisions of the Community courts.

Reference for a preliminary ruling from the Regeringsrätten (Sweden) lodged on 26 February 2009 — X v Skatteverket

(Case C-84/09)

(2009/C 90/30)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: X

Defendant: Skatteverket

Questions referred

1. Are Articles 138 and 20 of Council Directive [2006/112/EC] on the common system of value added tax ([1]) to be interpreted as meaning that the transport out of the territory of the State of origin must begin within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

2. Similarly, are those Articles to be interpreted as meaning that the transport must end in the country of destination within a certain period of time for the sale to be exempt from tax and for there to be an intra-Community acquisition?

3. Would the answers to questions 1 and 2 be affected if that which is acquired is a new means of transport and the person acquiring the goods is an individual who intends ultimately to use the means of transport in a particular Member State?

4. In connection with an intra-Community acquisition, at which time must the assessment be made as to whether a means of transport is new in accordance with Article 2(2)(b) of Council Directive [2006/112/EC] on the common system of value added tax?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1)

Reference for a preliminary ruling from the Amtsgericht Schorndorf (Germany) lodged on 2 March 2009 — Ingrid Putz v Medianess Electronics GmbH

(Case C-87/09)

(2009/C 90/31)

Language of the case: German

Referring court

Amtsgericht Schorndorf

Parties to the main proceedings

Applicant: Ingrid Putz

Defendant: Medianess Electronics GmbH

Questions referred

1. Are the provisions of Article 3(2), and the third subparagraph of Article 3(3), of Directive 1999/44/EC ([1]) of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees to be interpreted as precluding a national statutory provision under which a seller, in the event that it has restored a consumer product to conformity with a contract of sale by way of replacement, does not have to pay the costs of the installation, in a particular unit, of the subsequently delivered product, in the case where the consumer has properly installed the contractually defective consumer product, if installation was not originally a contractual requirement?

2. Are the provisions of Article 3(2), and the third subparagraph of Article 3(3), of Directive 1999/44/EC to be interpreted as meaning that a seller, in the event that it has restored a consumer product to conformity with a contract of sale by way of replacement, has to pay the costs of disconnection, from a particular unit, of the contractually defective consumer product, in the case where the consumer has properly installed the consumer product?

([1]) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12).

Appeal brought on 3 March 2009 by General Química, SA, Repsol Química, SA and Repsol YPF, SA against the judgment delivered on 18 December 2008 in Case T-85/06 General Química and Others v Commission of the European Communities

(Case C-90/09 P)

(2009/C 90/32)

Language of the case: Spanish

Parties

Appellants: General Química SA, Repsol Química SA and Repsol YPF, SA (represented by: J.M. Jiménez-Laiglesia Oñate and J. Jiménez-Laiglesia Oñate, abogados)

Other party to the proceedings: Commission of the European Communities

Forms of order sought

The appellants claim that the Court should:

— set aside the judgment of 18 December 2008 in Case T-85/06 in so far as it rejects the plea in law alleging manifest error of assessment and failure to state sufficient reasons for the finding that the applicants are jointly and severally liable;