

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Schöffner, acting as Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 16 December 2008 in Case T-335/07 *Mergel and Others v OHIM*, by which the Court dismissed the action for annulment of the decision of the Fourth Board of Appeal of OHIM of 25 June 2007, dismissing the action against the decision of the examiner to refuse the registration of the Community word mark 'Patentconsult' for the goods and services within Classes 35, 41 and 42 — Distinctive character of a mark which consists exclusively of signs or indications which may serve, in trade, to designate the characteristics of the goods or services concerned

Operative part of the order

The Court:

1. *Dismisses the appeal;*
2. *Orders Mergel, Kampfenkel, Bill and Herden to pay the costs.*

⁽¹⁾ OJ C 90, 18.4.2009.

Order of the Court (Fifth Chamber) of 18 March 2010 — Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-282/09 P) ⁽¹⁾

(Appeal — Article 119 of the Rules of Procedure — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(b) and (c) — Refusal to register — Overall assessment with regard to the goods and services referred to in the application for registration — Goods and services constitute homogeneous groups — Appeal in part manifestly unfounded and in part manifestly inadmissible)

(2010/C 148/17)

Language of the case: French

Parties

Appellant: Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) (represented by: P. Greffe and L. Paudrat, avocats)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 20 May 2009 in Joined Cases T-405/07 and T-406/07 *CFCMCEE v OHIM*, by which the Court dismissed the actions brought by the appellant against the decision of the First Board of Appeal of OHIM of 10 July and 12 September 2007, dismissing its actions against the examiner's refusal to register as trade marks of the word signs PAYWEB CARD and P@YWEB CARD for the goods and services within Classes 9, 36 and 38 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957 — Infringement of Article 7(1)(b) and Article 73 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Need for a separate examination of each of the grounds of refusal to register set out in Article 7(1) of that regulation — The requirement of reasons for the refusal to register with regard to each of the goods and services referred to in the application for registration — Goods and services constitute homogeneous groups

Operative part of the order

The Court:

1. *Dismisses the appeal;*
2. *Orders the Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) to pay the costs.*

⁽¹⁾ OJ C 233, 26.9.2009.

Reference for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 29 December 2009 — Generalbundesanwalt beim Bundesgerichtshof v E and F

(Case C-550/09)

(2010/C 148/18)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Prosecutor: Generalbundesanwalt beim Bundesgerichtshof

Defendants: E, F

Questions referred

1. Taking account, if appropriate, of the amended procedure resulting from the decision of the Council of the European Union of 28 June 2007 (2007/445/EC), ⁽¹⁾ is the listing on the basis of Article 2 of Council Regulation (EC) No 2580/2001 ⁽²⁾ of 27 December 2001 of an organisation which has not brought proceedings contesting the decisions concerning it to be regarded as effective from the outset even if basic procedural guarantees were infringed in listing it?
2. Are Articles 2 and 3 of Council Regulation (EC) No 2580/2001 of 27 December 2001 to be interpreted as meaning that funds, financial assets and economic resources are made available to a legal person, group or entity included in the list referred to in Article 2(3) of the regulation, that there is involvement in such provision or that there is participation in activities to circumvent Article 2 of the regulation even where the provider is, himself, a member of the legal person, group or entity?
3. Are Articles 2 and 3 of Council Regulation (EC) No 2580/2001 of 27 December 2001 to be interpreted as meaning that funds, financial assets and economic resources are made available to a legal person, group or entity included in the list referred to in Article 2(3) of the regulation, that there is involvement in such provision or that there is participation in activities to circumvent Article 2 of the regulation even where the asset to be provided already is, if only in the broader sense, accessible to the legal person, group or entity?

⁽¹⁾ Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC (OJ 2007 L 169, p. 58).

⁽²⁾ Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 70).

Appeal brought on 12 February 2010 by France Télécom SA against the judgment delivered on 30 November 2009 in Joined Cases T-427/04 and T-17/05 French Republic and France Télécom v Commission

(Case C-81/10 P)

(2010/C 148/19)

Language of the case: French

Parties

Appellant: France Télécom SA (represented by: S. Hautbourg, L. Olza Moreno, L. Godfroid and M. van der Woude, avocats)

Other parties to the proceedings: European Commission, French Republic

Form of order sought

- Set aside the judgment under appeal;
- give final judgment as to the substance in accordance with Article 61 of the Statute of the Court of Justice and grant the form of order sought by France Télécom at first instance;
- alternatively refer the case back to the General Court; and
- order the Commission to pay all the costs.

Pleas in law and main arguments

The appellant puts forward five pleas in law in support of its appeal.

By its first ground of appeal, France Télécom invokes the misapplication by the Court of First Instance (now 'the General Court') of the concept of State aid when it accepts that categorisation in the present case while, on the other hand, admitting that the existence (or non-existence) of any advantage did not depend in the present case on the inherent characteristics of the regime at issue, but on factors extraneous to the regime itself, the effects of which could be determined only *ex post*. The General Court thus misconstrued the very nature of the system of prior scrutiny of State aid provided for by Articles 107 TFEU and 108 TFEU, an *ex ante* system based on an objective analysis of the inherent characteristics of regimes on the basis of prior notification of national authorities.