ISSN 1725-2423

Official Journal of the European Union

C 249

Volume 49

English edition

Information and Notices

14 October 2006

Notice No | Contents | Page

I *Information*

Court of Justice

COURT OF JUSTICE

2006/C 249/01 Case C-235/05 P: Order of the Court (Fourth Chamber) of 27 April 2006 — L'Oréal SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Revlon (Switzerland) SA (Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Similarity between two trade marks — Likelihood of confusion — Application for Community trade mark FLEXI AIR — Earlier word mark FLEX — Refusal to register) 1

2006/C 249/02 Case C-268/05 P: Order of the Court (Fifth Chamber) of 7 February 2006 — Giorgio Lebedef v Commission of the European Communitites (Appeal — Officials — Rules on the levels, body, and procedures of consultation agreed between the majority of trade unions and staff associations and the Commission — Exclusion of the union 'Action et Défense' — Manifest inadmissibility) 1

2006/C 249/03 Case C-300/06: Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 6 July 2006 — Ursula Voß v Land Berlin, Other party to the proceedings: The representative of the national interest at the Bundesverwaltungsgericht 2

2006/C 249/04 Case C-302/06: Reference for a preliminary ruling from the Krajský sud v Prešove (Slovakia) lodged on 7 July 2006 — František Kovaľský v Mesto Prešov and Dopravný podnik Mesta Prešov as 2

2006/C 249/05 Case C-306/06: Reference for a preliminary ruling from the Oberlandesgericht Köln (Germany), lodged on 14 July 2006 — Deutsche Telekom AG v 01051 Telecom GmbH 2

2006/C 249/06 Case C-311/06: Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 17 July 2006 — Consiglio Nazionale degli Ingegneri v Ministero della Giustizia, Marco Cavallera 3

EN

(Continued overleaf)

Notice No | Contents (continued) | Page

2006/C 249/07 Case C-329/06: Reference for a preliminary ruling from the Verwaltungsgericht Sigmaringen (Germany) lodged on 28 July 2006 — Arthur Wiedemann v Land Baden-Württemberg 3

2006/C 249/08 Case C-340/06: Action brought on 4 August 2006 — Commission of the European Communities v Republic of Austria 3

2006/C 249/09 Case C-341/06 P: Appeal brought on 4 August 2006 by Chronopost SA against the judgment of the Court of First Instance (Third Chamber, Extended Composition) delivered on 7 June 2006 in Case T-613/97 Union française de l'express (Ufex) and Others v Commission of the European Communities 4

2006/C 249/10 Case C-342/06 P: Appeal brought on 7 August 2006 by La Poste against the judgment of the Court of First Instance delivered on 7 June 2006 in Case T-613/97 Union française de l'express (Ufex) and Others v Commission of the European Communities 5

2006/C 249/11 Case C-348/06 P: Appeal brought on 17 August 2006 by the Commission of the European Communities against the judgment of the Court of First Instance (First Chamber) delivered on 6 June 2006 in Case T-10/02 Girardot v Commission 5

2006/C 249/12 Case C-351/06: Action brought on 24 August 2006 — Commission of the European Communities v Federal Republic of Germany 6

2006/C 249/13 Case C-354/06: Action brought on 25 August 2006 — Commission of the European Communities v Grand Duchy of Luxembourg 6

2006/C 249/14 Case C-356/06: Action brought on 29 August 2006 — Commission of the European Communities v Republic of Austria 7

2006/C 249/15 Case C-358/06: Action brought on 30 August 2006 — Commission of the European Communities v Hellenic Republic 7

2006/C 249/16 Case C-359/06: Action brought on 31 August 2006 — Commission of the European Communities v Republic of Austria 7

2006/C 249/17 Case C-364/06: Action brought on 7 September 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg 8

2006/C 249/18 Case C-426/04 P: Order of the President of the First Chamber of the Court of 25 January 2006 — European Agency for Reconstruction (EAR) v Norbert Schmitt 8

2006/C 249/19 Case C-451/04: Order of the President of the Court of 30 January 2006 — Commission of the European Communities v French Republic 8

2006/C 249/20 Case C-185/05: Order of the President of the Court of 29 June 2006 — Commission of the European Communities v Italian Republic 8

2006/C 249/21 Case C-22/06: Order of the President of the Court of 27 April 2006 — Commission of the European Communities v Grand Duchy of Luxembourg 8

2006/C 249/22 Case C-41/06: Order of the President of the Court of 15 May 2006 — Commission of the European Communities v Grand Duchy of Luxembourg 9

2006/C 249/23 Case C-105/06: Order of the President of the Court of 15 May 2006 — Commission of the European Communities v Grand Duchy of Luxembourg 9

EN

Notice No	Contents (continued)	Page
2006/C 249/24	Case C-106/06: Order of the President of the Court of 15 May 2006 — Commission of the European Communities v Grand Duchy of Luxembourg	9
2006/C 249/25	Case C-170/06: Order of the President of the Court of 13 June 2006 (reference for a preliminary ruling from the Tribunale di Napoli — Italy) — Giuseppina Montoro and Michelangelo Liguori v Beth Israel Deaconess Medical Center	9
	COURT OF FIRST INSTANCE	
2006/C 249/26	Case T-87/94: Judgment of the Court of First Instance of 30 May 2006 — Blom and Others v Commission (Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producers who entered into a non-marketing undertaking — SLOM 1983 producers — Failure to resume production on expiry of the undertaking)	10
2006/C 249/27	Case T-69/06 R: Order of the President of the Court of First Instance of 2 August 2006 — Aughinish Alumina Ltd v Commission (Application for interim measures — Application for suspension of operation of a measure — State aid — Urgency)	10
2006/C 249/28	Case T-209/06: Action brought on 10 August 2006 — European Association of Im- and Exporters of Birds and live Animals and Others v Commission of the European Communities	11
2006/C 249/29	Case T-211/06: Action brought on 4 August 2006 — Euro-Information v OHIM (word mark 'CYBERCREDIT')	11
2006/C 249/30	Case T-213/06: Action brought on 4 August 2006 — Euro-Information v OHIM (word mark 'CYBERGESTION')	12
2006/C 249/31	Case T-215/06: Action brought on 8 August 2006 — American Clothing Associates v OHIM (figurative mark — maple leaf and the letters RW)	12
2006/C 249/32	Case T-217/06: Action brought on 10 August 2006 — Arkema and Others v Commission	13
2006/C 249/33	Case T-220/06: Action brought on 16 August 2006 — JAKO-O v OHIM — P.I. Fashion (JAKO-O)	14
2006/C 249/34	Case T-222/06: Action brought on 14 August 2006 — Italian Republic v Commission	14
2006/C 249/35	Case T-223/06 P: Appeal brought on 23 August 2006 by the European Parliament against the order of the European Union Civil Service Tribunal made on 13 July 2006 in Case F-102/05 Ole Eistrup v European Parliament	15
2006/C 249/36	Case T-226/06: Action brought on 25 August 2006 — PTV v OHIM (MAP&GUIDE The Mapware Company)	15
2006/C 249/37	Case T-227/06: Action brought on 25 August 2006 — RSA Security Ireland v Commission	15
2006/C 249/38	Case T-228/06: Action brought on 28 August 2006 — Giorgio Beverly Hills v OHIM — WHG Westdeutsche Handelsgesellschaft (GIORGIO BEVERLY HILLS)	16

EN

(Continued overleaf)

Notice No | Contents (continued) | Page

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

2006/C 249/39 Case F-99/06: Action brought on 25 August 2006 — Lopez Teruel v OHIM 18

II *Preparatory Acts*

. . . . . .

III *Notices*

2006/C 249/40 Last publication of the Court of Justice in the *Official Journal of the European Union*
OJ C 237, 30.9.2006 19

Corrigenda

2006/C 249/41 Corrigendum to the Notice in the Official Journal in Case T-200/06 20

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

Order of the Court (Fourth Chamber) of 27 April 2006 — L'Oréal SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Revlon (Switzerland) SA

(Case C-235/05 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Similarity between two trade marks — Likelihood of confusion — Application for Community trade mark FLEXI AIR — Earlier word mark FLEX — Refusal to register)

(2006/C 249/01)

Language of the case: English

Parties

Applicant: L'Oréal SA (represented by: X. Buffet Delmas d'Autane, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: G. Schneider, Agent), Revlon (Switzerland) SA

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 16 March 2005 in Case T-112/03 *L'Oréal SA* v *OHIM*, dismissing as unfounded an application brought by the applicant for the Community word mark FLEXI AIR for goods in Class 3 for the annulment of decision R 0396/2001-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 15 January 2003, dismissing the appeal against the decision of the Opposition Division refusing registration of that mark in opposition proceedings brought by the proprietor of the national word marks FLEX for goods in Classes 3 and 34

Operative part of the order

1. *The appeal is dismissed;*

2. *L'Oréal SA is ordered to pay the costs.*

([1]) OJ C 205, 20.8.2005.

Order of the Court (Fifth Chamber) of 7 February 2006 — Giorgio Lebedef v Commission of the European Communitites

(Case C-268/05 P) ([1])

(Appeal — Officials — Rules on the levels, body, and procedures of consultation agreed between the majority of trade unions and staff associations and the Commission — Exclusion of the union 'Action et Défense' — Manifest inadmissibility)

(2006/C 249/02)

Language of the case: French

Parties

Applicant: Giorgio Lebedef (represented by: G. Bounéou and F. Frabetti, lawyers)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall and V. Joris, acting as Agents)

Re:

Appeal against the judgment delivered on 12 April 2005 by the Court of First Instance (First Chamber) in Case T-191/02 *Lebedef* v *Commission*, dismissing the action for annulment of the Commission's decision to repudiate the Agreement of 20 September 1974 on Relations between the Commission and the Trade Unions and Staff Associations, and to adopt again the Operational Rules on the consultation levels, the consultation body and related procedures agreed between the Commission and the majority of trade unions and staff associations on 19 January 2000, which had been annulled by the Court of First Instance in its judgment of 15 November 2001, in so far as they excluded the union 'Action et Défense' from the consultation body.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Lebedef is ordered to pay the costs.*

([1]) OJ C 243, 01.10.2006.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 6 July 2006 — Ursula Voß v Land Berlin, Other party to the proceedings: The representative of the national interest at the Bundesverwaltungsgericht

(Case C-300/06)

(2006/C 249/03)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Ursula Voß

Defendant: Land Berlin

Other party to the proceedings: The representative of the national interest at the Bundesverwaltungsgericht

Question referred

Does Article 141 EC preclude national legislation under which remuneration for additional work which takes place outside of normal working hours is paid at the same rate with regard to full-time as well as part-time public servants and that rate is lower than the pro-rata remuneration allotted to full-time public servants as regards a period of equal length within normal working hours if it is predominantly women who are employed part-time?

Reference for a preliminary ruling from the Krajský sud v Prešove (Slovakia) lodged on 7 July 2006 — František Kovaľský v Mesto Prešov and Dopravný podnik Mesta Prešov as

(Case C-302/06)

(2006/C 249/04)

Language of the case: Slovak

Referring court

Krajský sud v Prešove (Slovakia)

Parties to the main proceedings

Applicant: František Kovaľský

Defendants: Mesto Prešov and Dopravný podnik Mesta Prešov as

Questions referred

1. Must the second paragraph of Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms, in connection with the possibility for States to enact laws to control the use of property, be interpreted as meaning that those laws must satisfy the condition of being in accordance not only with the general interest but also with the general principles of international law?

2. Does Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms protect the property of natural and legal persons without regard to the value of the property?

3. How may the general principles of international law be defined and specified for the purposes of the application of Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms?

Reference for a preliminary ruling from the Oberlandesgericht Köln (Germany), lodged on 14 July 2006 — Deutsche Telekom AG v 01051 Telecom GmbH

(Case C-306/06)

(2006/C 249/05)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: Deutsche Telekom AG

Defendant: 01051 Telecom GmbH

Question referred

Is a national rule that payment preventing the occurrence of default by a debtor or terminating existing default on his part does not depend on the time when the amount is credited to the creditor's account but on the time when the debtor gives a transfer order that is covered by sufficient funds or a sufficient credit limit and is accepted by the bank compatible with Article 3(1)(c)(ii) of Directive 2000/35/EC [1] of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions?

---

[1] OJ L 200, p. 35.

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 17 July 2006 — Consiglio Nazionale degli Ingegneri v Ministero della Giustizia, Marco Cavallera

(Case C-311/06)

(2006/C 249/06)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Consiglio Nazionale degli Ingegneri

Respondents: Ministero della Giustizia, Marco Cavallera

Questions referred

1. Does Directive 89/48/EEC [1] apply to an Italian national who: (a) obtained a three-year degree in engineering in Italy; (b) obtained recognition of the Italian qualification as being equivalent to the corresponding Spanish qualification; (c) obtained registration in the Spanish register of engineers but never pursued that profession in Spain; (d) applied, on the basis of the Spanish recognition of equivalence, for registration in the register of engineers in Italy?
2. If the answer to the first question is in the affirmative, is a domestic provision (Article 1 of Legislative Decree No 115 of 1992) that does not permit recognition in Italy of a qualification of a Member State which in turn is exclusively the result of recognition of a previous Italian qualification compatible with Directive 89/48/EEC?

[1] OJ L 19, p. 16.

Reference for a preliminary ruling from the Verwaltungsgericht Sigmaringen (Germany) lodged on 28 July 2006 — Arthur Wiedemann v Land Baden-Württemberg

(Case C-329/06)

(2006/C 249/07)

Language of the case: German

Referring court

Verwaltungsgericht Sigmaringen

Parties to the main proceedings

Applicant: Arthur Wiedemann

Defendant: Land Baden-Württemberg

Questions referred

1. Are Articles 1(2) and 8(2) and (4) of Directive 91/439/EEC [1] to be interpreted as meaning that the withdrawal of a driving licence by administrative authorities in the State of residence on account of unfitness to drive does not preclude another Member State from granting a driving licence, and that in principle the State of residence must recognise such a driving licence?
2. Are Articles 1(2), 7(1a) in conjunction with Annex III, and 8(2) and (4) of Directive 91/439/EEC to be interpreted as meaning that there is no obligation on the State of residence to recognise a driving licence which, following the withdrawal of his driving licence by his State of residence, a person has obtained by means of a fraud practised upon the driving licence authorities of the issuing State and without proof that he has become fit to drive again, or who has obtained it by means of colluding with employees of the authorities of the issuing State?
3. Are Articles 1(2) and 8(2) and (4) of Directive 91/439/EEC to be interpreted as meaning that where its administrative authorities have withdrawn a driving licence the State of residence may temporarily suspend recognition or prohibit the use of a driving licence issued by another Member State while the issuing State is considering whether to withdraw that driving licence, it having been obtained fraudulently?

[1] OJ L 237, p 1

Action brought on 4 August 2006 — Commission of the European Communities v Republic of Austria

(Case C-340/06)

(2006/C 249/08)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker, acting as Agent)

Defendant: Republic of Austria

Form of order sought

The Court is asked to:

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to transpose Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC [1], or by not informing the Commission of such provisions, the Republic of Austria has failed to fulfil its obligations under that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 14 February 2005.

[1] OJ 2003 L 41, pp. 26-32

Appeal brought on 4 August 2006 by Chronopost SA against the judgment of the Court of First Instance (Third Chamber, Extended Composition) delivered on 7 June 2006 in Case T-613/97 Union française de l'express (Ufex) and Others v Commission of the European Communities

(Case C-341/06 P)

(2006/C 249/09)

Language of the case: French

Parties

Appellant: **Chronopost SA** (represented by: D. Berlin, avocat)

Other parties to the proceedings: Commission of the European Communities, French Republic, La Poste, Union française de l'express (Ufex), DHL International SA, Federal express international (France) SNC, CRIE SA

Form of order sought

The applicant claims that the Court should:

— quash the judgment of the Court of First Instance of 7 June 2006 inasmuch as it annuls Commission Decision 98/365/EC of 1 October 1997 [1] on the ground of inadequate reasoning and failure to apply the concept of State aid;

— endorse the remainder of the judgment of the Court of First Instance, give final judgment without referring the case back to the Court of First Instance, and affirm the legality of Commission Decision 98/365/EC of 1 October 1997;

— order the applicants at first instance to pay the entire costs.

Pleas in law and main arguments

The applicant puts forward three grounds of appeal.

By its first ground of appeal, the applicant alleges an infringement, by the Court of First Instance, of the general principles of Community law and, in particular, of the right to a fair trial in so far as that Court did not provide all of the necessary guarantees of impartiality as the judge who acted as Rapporteur in the contested judgment of 7 June 2006 was also a member of the Chamber which adopted the judgment — annulled by the Court — in Case T-613/97 *Ufex and Others* v *Commission* [2000] ECR II-4055.

By its second ground of appeal, the applicant alleges that the Court exceeded its competence and infringed Articles 230 EC and 253 EC in that it carried out, in the guise of a review of the statement of reasons provided, a review of the substance of Commission Decision 98/365/EC of 1 October 1997 concerning alleged State aid granted by France to SFMI-Chronopost (OJ 1998, L 164, p. 37) and of the allegedly manifest errors of assessment which the Commission made in the exercise of its discretion. The applicant also alleges that the Court substituted its own assessment for that of the Commission, thereby exceeding its competence and causing another infringement of Articles 230 and 253 EC.

By its third ground of appeal, the applicant finally alleges that the Court made several errors of law by comparing the conduct of a public undertaking benefiting from a reserved sector to that of a private undertaking, by applying to the creation of an undertaking by a parent company the case-law concerning the relationships between parent companies and existing subsidiaries and concluding that SFMI was given an advantage, resulting from the transfer to its books of Postadex's customers. For these various reasons, the Court infringed Article 87 EC.

[1] OJ 1998 L 164, p. 37

Appeal brought on 7 August 2006 by La Poste against the judgment of the Court of First Instance delivered on 7 June 2006 in Case T-613/97 Union française de l'express (Ufex) and Others v Commission of the European Communities

(Case C-342/06 P)

(2006/C 249/10)

Language of the case: French

Parties

Appellant: La Poste (represented by: H. Lehman, avocat)

Other parties to the proceedings: Commission of the European Communities, French Republic, Chronopost SA, Union française de l'express (Ufex), DHL International SA, Federal express international (France) SNC, CRIE SA

Form of order sought

The applicant claims that the Court should:

— set aside the judgment of the Court of First Instance of 7 June 2006 inasmuch as it annulled Commission Decision 98/365/EC of 1 October 1997 concerning alleged State aid granted by France to SFMI-Chronopost ([1]) in so far as it finds that neither the logistical and commercial assistance provided by La Poste to its subsidiary, SFMI-Chronopost, nor the transfer of Postadex constitute State aid to SFMI-Chronopost;

— order Union française de l'express, DHL International, Federal express international and CRIE to pay the costs incurred by La Poste before the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

The applicant puts forward three grounds of appeal.

By its first ground of appeal, the applicant alleges that the Court of First Instance has infringed Article 6 EU and Article 6(1) of the European Convention on the Protection of Human Rights and Fundamental Freedoms in so far as that Court did not provide all of the necessary guarantees of impartiality as the judge who acted as Rapporteur in the contested judgment of 7 June 2006 was also the President of the Chamber which adopted the judgment — set aside by the Court of Justice — in Case T-613/97 *Ufex and Others* v *Commission* [2000] ECR II-4055.

By its second ground of appeal, which is in two parts, the applicant alleges that the Court committed several errors of law and of procedure. First, the Court did not declare inadmissible certain pleas in law which were not included in the initial application and examined them, in infringement of Article 48(2) of the Rules of Procedure of the Court of First Instance. Second, that Court committed an error of law in wrongly taking the view that the transfer of an economic activity to a subsidiary constitutes, essentially, State aid. The Court more particularly misconstrued that concept by not taking into account the particular situation of the transfer to a subsidiary of an economic activity previously carried out by the State and by not establishing the effects on the market of the measure examined.

By its third ground of appeal, the applicant finally alleges that the Court imposed on the Commission an obligation to state reasons which was excessive, in infringement of Article 88 EC, which confers on the Commission a broad discretion in the making of complex economic assessments, and Article 253 EC, which does not require the grounds of a decision rejecting a complaint to be as detailed as an accountant's report.

([1]) OJ 1998 L 164, p. 37.

Appeal brought on 17 August 2006 by the Commission of the European Communities against the judgment of the Court of First Instance (First Chamber) delivered on 6 June 2006 in Case T-10/02 Girardot v Commission

(Case C-348/06 P)

(2006/C 249/11)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: D. Martin, F. Clotuche-Duvieusart, Agents)

Other party to the proceedings: Marie-Claude Girardot

Form of order sought

In its appeal, the appellant claims that the Court should:

— set aside the judgment of the Court of First Instance of 6 June 2006 in Case T-10/02;

— order the Commission to pay Ms Girardot the sum of EUR 23 917,40;

— order that the parties should bear their own costs in the appeal proceedings and in the proceedings before the Court of First Instance of the European Communities

Pleas in law and main arguments

The appellant bases its appeal on a single plea, alleging infringement of Article 236 EC and of the conditions governing the liability of the Commission. The appellant essentially claims that the Court of First Instance wrongly interpreted the notion of loss of an 'opportunity' to fill a post as being a notion equivalent to the loss of a 'guarantee' to fill a post — thus failing to have regard to the discretion traditionally accorded to the Commission in recruitment — and, consequently, used an erroneous method of calculation of the sum payable by the Commission to compensate for the loss of an opportunity to be recruited resulting from an unlawful decision of the Commission. Only actual and certain damage can give rise to compensation. However, in the present case, the only actual and certain damage caused to the interested party is that which results from the Commission's failure to consider her candidature, and not that which results from a hypothetical loss of earnings.

Moreover, the Commission notes that the criterion of loss of earnings used by the Court of First Instance to calculate the damage to be compensated is itself uncertain because if the interested party had, during the period in question, taken employment outside the Community Institutions which was better paid than the post which she could have obtained in the Commission, there would have been no loss of earnings to compensate. The method used by the Court of First Instance may therefore also lead to discrimination between candidates for the same recruitment on the basis of whether or not they occupy a post that is better paid than that to which they had the opportunity of being recruited.

Action brought on 24 August 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-351/06)

(2006/C 249/12)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: L. Pignataro-Nolin and I. Kaufmann-Bühler, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The Court is asked to:

— declare that, by not adopting the laws, regulations and administrative provisions necessary to transpose Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products [1] or by not informing the Commission of such provisions, the Federal Republic of Germany has failed to fulfil its obligations under Article 10 of that directive;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 31 July 2005.

---

[1] OJ 2003 L 152, p. 16

Action brought on 25 August 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-354/06)

(2006/C 249/13)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J. Hottiaux, F. Simonetti, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

By its action, the applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations or administrative provisions necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC [1], and, in any event, by failing to notify such provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period within which Directive 2003/35/EC had to be transposed expired on 25 June 2005.

---

[1] OJ L 156. p. 17

Action brought on 29 August 2006 — Commission of the European Communities v Republic of Austria

(Case C-356/06)

(2006/C 249/14)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: B. Schima, acting as Agent)

Defendant: Republic of Austria

Form of order sought

The Court is asked to:

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to transpose Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances [1], or by not informing the Commission of such provisions, the Republic of Austria has failed to fulfil its obligations under Article 2(1) of that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 1 July 2005.

[1] OJ 2003 L 345, p. 97

Action brought on 30 August 2006 — Commission of the European Communities v Hellenic Republic

(Case C-358/06)

(2006/C 249/15)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Konstantinidis and B. Schima)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting, and in any event by not notifying to the Commission, the laws, regulations and administrative provisions necessary to comply with Directive 2003/105/EC [1] of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive into domestic law expired on 1 July 2005.

[1] OJ L 345, 31.12.2003, p. 97.

Action brought on 31 August 2006 — Commission of the European Communities v Republic of Austria

(Case C-359/06)

(2006/C 249/16)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: V. Kreuschitz and I. Kaufmann-Bühler, acting as Agents)

Defendant: Republic of Austria

Form of order sought

The Court is asked to:

— declare that by not adopting the necessary laws, regulations and administrative provisions necessary to transpose Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) [1] or by not informing the Commission of such provisions, the Republic of Austria has failed to fulfil its obligations under that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 19 July 2004.

[1] OJ 2001 L 195, p. 46

Action brought on 7 September 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-364/06)

(2006/C 249/17)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell, Agent)

Defendant: Grand-Duchy of Luxembourg

Forms of order sought

The Court is asked to:

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with the Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities ([1]), or in any event by failing to communicate them to the Commission, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that Directive.

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2002/15/EC into domestic law expired on 23 March 2005.

([1]) JO 2002 L 80, p. 35.

Order of the President of the First Chamber of the Court of 25 January 2006 — European Agency for Reconstruction (EAR) v Norbert Schmitt

(Case C-426/04 P) ([1])

(2006/C 249/18)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 300, 04.12.2004.

Order of the President of the Court of 30 January 2006 — Commission of the European Communities v French Republic

(Case C-451/04) ([1])

(2006/C 249/19)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 314, 18.12.2004.

Order of the President of the Court of 29 June 2006 — Commission of the European Communities v Italian Republic

(Case C-185/05) ([1])

(2006/C 249/20)

Language of the case: Italian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 182, 23.07.2005.

Order of the President of the Court of 27 April 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-22/06) ([1])

(2006/C 249/21)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 60, 11.03.2006.

Order of the President of the Court of 15 May 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-41/06) ([1])

(2006/C 249/22)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 60, 11.03.2006.

Order of the President of the Court of 15 May 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-105/06) ([1])

(2006/C 249/23)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 86, 08.04.2006.

Order of the President of the Court of 15 May 2006 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-106/06) ([1])

(2006/C 249/24)

Language of the case: French

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 86, 08.04.2006.

Order of the President of the Court of 13 June 2006 (reference for a preliminary ruling from the Tribunale di Napoli — Italy) — Giuseppina Montoro and Michelangelo Liguori v Beth Israel Deaconess Medical Center

(Case C-170/06) ([1])

(2006/C 249/25)

Language of the case: Italian

The President of the Court has ordered that the case be removed from the register.

([1]) OJ C 143, 17.06.2006.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 30 May 2006 — Blom and Others v Commission

(Case T-87/94) ([1])

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producers who entered into a non-marketing undertaking — SLOM 1983 producers — Failure to resume production on expiry of the undertaking)

(2006/C 249/26)

Language of the case: Dutch

Parties

Applicants: J.C. Blom (Blokker, Netherlands) and the other applicants whose names appear in the annex to the judgment (represented by: initially H. Bronkhorst and E. Pijnacker Hordijk, lawyers, and subsequently by E. Pijnacker Hordijk)

Defendants: Council of the European Union (represented by: initially A. Brautigam and A.-M. Colaert, Agents, and subsequently by A.-M. Colaert) and Commission of the European Communities (represented by: initially T. van Rijn, Agent, assisted by H.-J. Rabe, lawyer, and subsequently by T. van Rijn)

Re:

Application for compensation, under Article 178 of the EC Treaty (now Article 235 EC) and the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC), for damage allegedly suffered by the applicant as a result of his having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation No 804/68 (OJ 1984 L 132, p. 11).

Operative part of the judgment

The Court:

1. *Dismisses the action, in so far as it was brought by Mr J.C. Blom;*

2. *Orders the applicant to pay the costs;*

3. *Reserves the disposal of the action in the same case, in so far as it was brought by the applicants whose names appear in the annex.*

([1]) OJ C 90, 26.3.1994.

Order of the President of the Court of First Instance of 2 August 2006 — Aughinish Alumina Ltd v Commission

(Case T-69/06 R)

(Application for interim measures — Application for suspension of operation of a measure — State aid — Urgency)

(2006/C 249/27)

Language of the case: English

Parties

Applicant: Aughinish Alumina Ltd (Askeaton, Ireland) (represented by: J. Handoll and C. Waterson, solicitors)

Defendant: Commission of the European Communities (represented by: N. Khan and K. Walkerová, Agents)

Re:

Application for suspension of the operation of Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia, respectively implemented by France, Ireland and Italy (OJ 2006 L 119, p. 12) in so far as it relates to the applicant

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Action brought on 10 August 2006 — European Association of Im- and Exporters of Birds and live Animals and Others v Commission of the European Communities

(Case T-209/06)

(2006/C 249/28)

Language of the case: Dutch

Parties

Applicants: European Association of Im- and Exporters of Birds and live Animals, Vereniging van Im- en Exporteurs van Vogels en Hobbydieren, Willem Plomp, trading as Plomps Vogelhandel and Marinus Borgstein (represented by: J. Wouters, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision 2006/522/EC of 25 July 2006;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants are (i) associations which promote the interests of importers and exporters of birds and animals and (ii) importers and exporters of, inter alia, birds. They contest Commission Decision 2006/522/EC [1].

The applicants contend that the contested decision is unnecessary, as the existing quarantine rules offer adequate protection.

They also submit that the decision is in conflict with the precautionary principle because the Commission has not based it on the most complete possible scientific evaluation.

A complete ban on imports is also disproportionate in light of the factual background to the decision, namely the infection of birds from Taiwan with avian influenza.

The applicants also argue that the Commission has misused its powers and that the real reason for the extension of the protective measures is the Commission's wish to await the outcome of the report from the Animal Health and Welfare panel of the European Food Safety Authority.

The measures are also discriminatory inasmuch as poultry is excluded from their scope.

[1] 2006/522/EC: Commission Decision of 25 July 2006 amending Decisions 2005/759/EC and 2005/760/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of certain live birds into the Community (notified under document number C(2006) 3303) (Text with EEA relevance) (OJ 2006 L 205, p. 28).

Action brought on 4 August 2006 — Euro-Information v OHIM (word mark 'CYBERCREDIT')

(Case T-211/06)

(2006/C 249/29)

Language in which the application was lodged: French

Parties

Applicant: Européenne de traitement de l'information SAS (Euro-Information) (Strasbourg, France) (represented by: A. Jacquet, J. Schouman and P. Greffe, lawyers)

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

Form of order sought

— annulment in its entirety of the decision of the First Board of Appeal of OHIM of 12 June 2006, Case R 66/2006-1, which refused to register 'CYBERCREDIT' as a Community trade mark, under application No 4 114 336, in respect of all the goods and services applied for in Classes 9, 36 and 38;

— registration of 'CYBERCREDIT' as a Community trade mark, under application No 4 114 336, in respect of all the goods and services applied for.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'CYBERCREDIT' in respect of goods and services in Classes 9, 36 and 38 (application No 4 114 336)

Decision of the examiner: Refusal to register

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The applicant claims that, contrary to the finding of the Board of Appeal of OHIM in the contested decision, its mark is arbitrary and is sufficiently distinctive in relation to the goods and services applied for to meet the requirements of Council Regulation No 40/94.

Action brought on 4 August 2006 — Euro-Information v OHIM (word mark 'CYBERGESTION')

(Case T-213/06)

(2006/C 249/30)

Language in which the application was lodged: French

Parties

Applicant: Européenne de traitement de l'information SAS (Euro-Information) (Strasbourg, France) (represented by: A. Jacquet, J. Schouman and P. Greffe, lawyers)

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

Form of order sought

— annulment in its entirety of the decision of the First Board of Appeal of OHIM of 24 May 2006, Case R 68/2006-1, which refused to register 'CYBERGESTION' as a Community trade mark, under application No 4 114 716, in respect of all the goods and services applied for in Classes 9, 36 and 38;

— registration of 'CYBERGESTION' as a Community trade mark, under application No 4 114 716, in respect of all the goods and services applied for.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'CYBERGESTION' in respect of goods and services in Classes 9, 36 and 38 (application No 4 114 716)

Decision of the examiner: Refusal to register

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The applicant claims that, contrary to the finding of the Board of Appeal of OHIM in the contested decision, its mark is arbitrary and is sufficiently distinctive in relation to the goods and services applied for to meet the requirements of Council Regulation No 40/94.

Action brought on 8 August 2006 — American Clothing Associates v OHIM (figurative mark — maple leaf and the letters RW)

(Case T-215/06)

(2006/C 249/31)

Language in which the application was lodged: French

Parties

Applicant: American Clothing Associates (Evergem, Belgium) (represented by: P. Maeyaert and N. Clarembeaux, lawyers)

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

Form of order sought

— annul the decision of the First Board of Appeal of OHIM of 4 May 2006 in Case R 1463/2005-1;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark consisting of a representation of a maple leaf and the letters RW in respect of goods and services in Classes 18, 25 and 40 (application No 2 785 368)

Decision of the examiner: Refusal to register

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The applicant first pleads infringement of Article 7(1)(h) of Council Regulation No 40/94 and of Article 6 ter of the Paris Convention in so far as the Board of Appeal of OHIM failed to take into consideration the overall impression of the mark applied for and erred in its assessment of the imitative heraldic character of a maple leaf from which it is formed. The applicant also claims that the Board of Appeal was wrong to refuse to take into consideration the reputation of the trade mark when applying an absolute ground for refusal provided for in Article 7(1)(h) of Regulation No 40/94.

Action brought on 10 August 2006 — Arkema and Others v Commission

(Case T-217/06)

(2006/C 249/32)

Language of the case: French

Parties

Applicants: Arkema France SA (Puteaux, France), Altuglass International SA (Puteaux, France) and Altumax Europe SAS (Puteaux, France) (represented by: A. Winckler, S. Sorinas and P. Geffriaud, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— on the basis of Article 230 EC, annul the decision adopted by the Commission of the European Communities on 31 May 2006 in Case COMP/F/38.645 in so far as it concerns Arkema;

— in the alternative, annul or reduce, on the basis of Article 229 EC, the amount of the fine imposed on it by that decision;

— order the Commission of the European Communities to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment in part of Commission Decision C(2006) 2098 final of 31 May 2006 (Case COMP/F/38.645 — Methacrylates) in so far as it held the applicant's parent companies liable for the infringement which the applicant committed in breach of Article 81 EC and Article 53 of the EEA Agreement by participating in a complex of agreements and concerted practices in the methacrylates sector consisting of discussions on prices, of the agreement, implementation and monitoring of price agreements, of the exchange of commercially important and confidential market and/or company relevant information, and also of participation in regular meetings and other contacts to facilitate the infringement. In the alternative, the applicant seeks a reduction in the amount of the fine imposed on it by the contested decision.

In support of its principal claims, the applicant argues that, by holding its parent companies liable for the infringement it committed, on the basis of a mere presumption linked to the fact that almost all its capital was held by those companies at the material time, the Commission made errors of law and fact in the application of the rules relating to holding a parent company liable for infringements committed by its subsidiary and also infringed the principle of non-discrimination. The applicant also takes the view that, by failing to respond to the arguments it advanced in the course of the administrative procedure which sought to show that it enjoyed complete autonomy in determining its commercial policy, and this despite the parent companies' holding almost all its share capital at the material time, the Commission acted in breach of its duty to state reasons under Article 253 EC and the principle of good administration.

In the alternative, the applicant seeks the annulment or reduction of the fine imposed on it by the contested decision. In support of its claims in this regard, it puts forward several pleas alleging inter alia errors of law and fact committed by the Commission when fixing the starting amount of the fine. The applicant argues that this amount is excessive since the infringement, it maintains, had only a very limited impact on the product markets at issue. The applicant argues further that the Commission acted in breach of the duty to state reasons and the principle of good administration in taking the view that the actual impact of the infringement on the market should not be taken into account when determining the starting amount of the fine.

Furthermore, the applicant submits that the Commission erred in fact and in law by increasing by 200 % the starting amount of the fine by way of a deterrent by taking as a basis the turnover of its parent company at the material time, since that company could not, according to the applicant, be held liable for the infringement in the light of the commercial autonomy the applicant enjoyed at the material time and of the fact that the directors of the parent companies were not involved in the practices at issue.

The applicant also claims that in order to increase the level of the fine imposed on it, the Commission took into account decisions against it from 1984, 1986 and 1994 and that, in so doing, its application of the notion of repeated infringement was manifestly excessive and contrary to the principles of lawful punishment and legal certainty. Moreover, the applicant argues that by applying the principle of repeated infringement, the Commission acted in breach of the principle of 'non bis in idem' and the principle of proportionality, since the existence of earlier decisions against it had already been taken into account on several occasions by the Commission in recent decisions.

The applicant further submits that the Commission made an error of fact in that it did not grant a reduction in the fine on account of the fact that certain offending practices were not actually implemented.

By its final plea, the applicant asserts that the Commission should also have taken into account, when fixing the amount of the fine, by way of other factors, the fact that the applicant was recently ordered to pay significant fines.

Action brought on 16 August 2006 — JAKO-O v OHIM — P.I. Fashion (JAKO-O)

(Case T-220/06)

(2006/C 249/33)

Language in which the application was lodged: English

Parties

Applicant: JAKO-O Möbel und Spielmittel für die junge Familie GmbH (Bad Rodach, Germany) (represented by: E. Bertram, lawyer)

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

Other party to the proceedings before the Board of Appeal: P.I. Fashion B.V. (Amsterdam, The Netherlands)

Form of order sought

— Annulment of the decision of the Second Board of Appeal of 14 June 2006 (Case R 1178/2005-2) of the Office of Harmonisation in the Internal Market;

— rejection of the opposition No B 553695 against CTM application No 2395564;

— order the costs of the proceedings to be borne by the defendant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The Community word mark 'JAKO-O' for goods and services in classes 3, 8, 9, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 28, 39 and 41 (soaps, perfumery, essential oils, cosmetics) — application No 2395564.

Proprietor of the mark or sign cited in the opposition proceedings: P.I. Fashion B.V.

Mark or sign cited: The national figurative mark 'LAGERFELD JAKO' for goods and services in Class 3.

Decision of the Opposition Division: Opposition upheld for the contested goods.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94.

The applicant argues that there is no similarity between the earlier right and the community trademark application either phonetically, visually or conceptually and therefore, no likelihood of confusion in the sense of the above-mentioned article. The likelihood of confusion is further reduced, according to the applicant, by the fame attributed to the element LAGERFELD by the average consumer, which is to be regarded as the dominant element of the mark.

Action brought on 14 August 2006 — Italian Republic v Commission

(Case T-222/06)

(2006/C 249/34)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: Paolo Gentili, lawyer)

Defendants: Commission of the European Communities

Form of order sought

The Court is asked to:

— annul Memorandum No 04673 of 6 June 2006 of the European Commission, Directorate-General for Regional Policy — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning payments made by the Commission which differ from the amount requested. Ref. Programme SPD Piemonte (No CCI 2000 IT 16 2 DO 007);

— annul all related and prior measures and, consequently, order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-345/04 *Italian Republic v Commission* ([1])

([1]) OJ C 262, 23.10.2004, p. 55.

Appeal brought on 23 August 2006 by the European Parliament against the order of the European Union Civil Service Tribunal made on 13 July 2006 in Case F-102/05 Ole Eistrup v European Parliament

(Case T-223/06 P)

(2006/C 249/35)

Language of the case: Danish

Parties

Appellant: European Parliament (Strasbourg, France) (represented by H. von Hertzen and L. Knudsen, Agents)

Other party to the appeal proceedings: Ole Eistrup

Form of order sought by the appellant

The appellant submits that the Court should:

— Set aside the order of the European Union Civil Service Tribunal;

— Itself give a ruling in the case by upholding the appellant's preliminary objection;

— Dismiss the action brought by Ole Eistrup;

— Give a ruling as to costs in accordance with the relevant rules.

Pleas in law and main arguments

In support of its appeal the European Parliament submits that the European Union Civil Service Tribunal infringed the first subparagraph of Article 43(1) of the Rules of Procedure of the Court of First Instance by not dismissing the case, despite the fact that the application did not bear the signature of the applicant's lawyer but rather a facsimile stamp reproducing the lawyer's signature.

The European Parliament also submits that the Civil Service Tribunal set aside the principle of legal certainty by making application of the first subparagraph of Article 43(1) of the Rules of Procedure dependent on whether there was a disproportionate failure to guarantee access to the courts. It is thus impossible to predict whether it will be possible to examine a case on its merits.

Action brought on 25 August 2006 — PTV v OHIM (MAP&GUIDE The Mapware Company)

(Case T-226/06)

(2006/C 249/36)

Language of the case: German

Parties

Applicant: PTV Planung Transport Verkehr AG (Karlsruhe, Germany) (represented by F. Nielsen, lawyer)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 16 June 2006 (Case R 1175/2005-1);

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'MAP&GUIDE The Mapware Company' for goods and services in Classes 9, 16 and 42.

Decision of the Examiner: Rejection in part of the application for registration.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: The mark for which registration is sought is distinctive for the purposes of Article 7(1)(b) of Regulation (EC) No 40/94. ([1])

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Action brought on 25 August 2006 — RSA Security Ireland v Commission

(Case T-227/06)

(2006/C 249/37)

Language of the case: English

Parties

Applicant: RSA Security Ireland Ltd (Shannon, Ireland) (represented by: B. Conway, Barrister and S. Daly, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Regulation (EC) No 888/2006 of 16 June 2006 as it fails to classify the applicant's product for tariff classification purposes under the Combined Nomenclature by reference to the objective characteristics and qualities of the product.

— In the alternative, annul Commission Regulation (EC) No 888/2006 as it was enacted by the Commission on foot of an abuse of powers by the Commission and/or an infringement of essential procedural requirements.

— Declare that the customs classification of the product is to be determined pursuant to the intrinsic characteristic of the product which is that it is in the nature of an automatic data processing machine and so falls to be classified within the terms of chapter 8471 of the Combined Nomenclature.

— In the alternative, declare that the essential characteristic of the product is its specific capacity to generate and perform mathematical calculations specified by the user at the time of purchase and that is so falls to be classified as a calculating device within the terms of chapter 8470 of the Combined Nomenclature.

— Declare that in accordance with the accepted classification rules of goods for Community customs purposes the essential characteristic of the product is not that of a security device or the granting of access to records whether stored on an automatic data processing machine or otherwise.

— Order the payment to the applicant of such customs duty as has been paid by the applicant in respect of the importation of the product into the Community since the coming into force of Commission Regulation (EC) No 888/2006 together with the payment of interest to the applicant.

— Order the Commission to pay the applicant's costs.

Pleas in law and main arguments

The applicant is importing and selling the product 'RSA SecurID authenticator' in the Community. The company seeks the annulment of Commission Regulation No 888/2006 [1] by which this product was classified under heading 8543 in the Combined Nomenclature.

The applicant contends that, in enacting Regulation No 888/2006, the Commission has failed to identify the essential characteristics of the product and it has misdescribed the product as 'a security device' and as a device '[which] allows the user access to the records stored on an ADP machine' in the description of the goods in the annex to Regulation No 888/2006. The applicant alleges that these failures are errors of law which should lead to the annulment of the regulation.

[1] Commission Regulation (EC) No 888/2006 of 16 June 2006 concerning the classification of certain goods in the Combined Nomenclature (OJ 2006 L 165, p. 6).

Action brought on 28 August 2006 — Giorgio Beverly Hills v OHIM — WHG Westdeutsche Handelsgesellschaft (GIORGIO BEVERLY HILLS)

(Case T-228/06)

(2006/C 249/38)

Language in which the application was lodged: English

Parties

Applicant: Giorgio Beverly Hills Inc. (Cincinnati, USA) (represented by: M. Schaeffer, lawyer)

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

Other party to the proceedings before the Board of Appeal: WHG Westdeutsche Handelsgesellschaft mbH (Hagen, Germany)

Form of order sought

— Overrule the decision of the Second Board of Appeal of 21 June 2006 in joined Cases R 107/2005-2 and R 187/2005-2 as far as appeal No R 187/2005-2 was dismissed;

— reject the opposition B 57259 dated July 6, 1998 as far as this opposition was upheld by the decision No 4157/2004 of the Opposition Division of 10 December 2004;

— order the defendant to bear the costs of the proceedings;

— order the intervener to bear the costs of the proceeding before the Office for Harmonisation.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'GIORGIO BEVERLY HILLS' for goods in classes 3, 14, 18 and 25 — application No 417 709

Proprietor of the mark or sign cited in the opposition proceedings: WHG Westdeutsche Handelsgesellschaft mbH.

Mark or sign cited: The national word mark and Community figurative mark 'GIORGIO' for goods in classes 18, 24 and 25

Decision of the Opposition Division: Opposition upheld for part of the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: There is no sufficient risk of confusion between the conflicting trade marks as there does not exist a relevant similarity between the marks.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 25 August 2006 — Lopez Teruel v OHIM

(Case F-99/06)

(2006/C 249/39)

Language of the case: French

Parties

Applicant: Adelaida Lopez Teruel (El Casar, Spain) (represented by: G. Vandersanden, L. Levi and C. Ronzi, lawyers)

Defendant: Office for Harmonisation in the Internal Market

Form of order sought

The Court is asked to:

— annul the decision of the Appointing Authority of 20 October 2005 taken in response to the opinion of the independent doctor referred to in Article 59(1) of the Staff Regulations;

— so far as necessary, annul the Appointing Authority's decision of 17 May 2006 rejecting the complaint brought by the applicant on 20 January 2006;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an OHIM official, submitted medical certificates justifying her absence from work from 7 April to 7 August 2005. The validity of those certificates was disputed by OHIM, which required the applicant to undergo medical examinations. On the basis of those examinations, OHIM ordered the applicant to return to her post from 2 August 2005. The procedure for an independent medical opinion, set in motion at the applicant's request in accordance with Article 59(1) of the Staff Regulations, confirmed the fact that the applicant's absence was irregular.

In support of her application, the applicant puts forward three pleas, the first of which alleges infringement of the fifth and the sixth paragraphs of the abovementioned provision. So far as the fifth paragraph is concerned, the applicant criticises the calculation of the days of absence which OHIM treated as being irregular following the medical examinations. So far as the sixth paragraph is concerned, the applicant submits, first, that AIPN acted improperly in its selection of the independent doctor, although there was no disagreement between the institution's medical officer and the applicant's doctor as regards the selection of the third doctor. Second, the period of five days referred to in the paragraph in question ran only from the time when the institution's medical officer contacted the official's doctor. In the alternative, she submits that this time-limit is not mandatory.

In her second plea, the applicant alleges that the statement of reasons in the independent doctor's opinion was erroneous and that it was not properly drawn up, in so far as the conclusions of that opinion are not consistent with the medical findings contained therein.

In her third plea, the applicant alleges infringement of the duty to have regard for the welfare of officials, the principle of good administration, the principle of openness and the rights of the defence.

III

(Notices)

(2006/C 249/40)

Last publication of the Court of Justice in the *Official Journal of the European Union*

OJ C 237, 30.9.2006

Past publications

OJ C 224, 16.9.2006

OJ C 212, 2.9.2006

OJ C 190, 12.8.2006

OJ C 178, 29.7.2006

OJ C 165, 15.7.2006

OJ C 154, 1.7.2006

These texts are available on:
EUR-Lex:http://eur-lex.europa.eu

CORRIGENDA

Corrigendum to the Notice in the Official Journal in Case T-200/06

(2006/C 249/41)

The notice in the *Official Journal of the European Union* in Case T-200/06 *IBERDROLA* v Commission of the European Communities, as referred to in Article 24(6) of the Rules of Procedure of the Court of First Instance, was published twice, on 16 September 2006 (OJ C 224, p. 49) and 30 September 2006 (OJ C 237, p. 9).

Regard being had to the provisions of Article 116(6) of the Rules of Procedure of the Court of First Instance, the second publication of the notice in question in the *Official Journal of the European Union* is the only one to be taken into account in calculating the period referred to in Article 115(1) of the Rules of Procedure.