

Pleas in law and main arguments

The period for transposition of Directive 2000/56/EC expired on 30 September 2003.

(¹) OJ L 237 of 21.9.2000, p. 45.

Appeal brought on 15 December 2004 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG against the judgment delivered on 6 October 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-356/02 between Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG and the Office for Harmonisation in the Internal Market (Trade Marks and Designs), supported by Krafft SA

(Case C-512/04 P)

(2005/C 45/33)

(Language of the case: German)

An appeal against the judgment delivered on 6 October 2004 by the Second Chamber of the Court of First Instance of the European Communities in Case T-356/02 between Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG and the Office for Harmonisation in the Internal Market (Trade Marks and Designs), supported by Krafft SA, was brought before the Court of Justice of the European Communities on 15 December 2004 by Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG, represented by Dr Ulrich Sander, Eisenführ, Speiser & Partner, Martinistrasse 24, D-28195 Bremen.

The appellant claims that the Court should:

Set aside the judgment delivered on 6 October 2004 by the Court of First Instance (Second Chamber) in Case T-356/02, 1 in so far as the decision was to the appellant's detriment.

Pleas and main arguments

The question to be decided in the present case is that of the likelihood of confusion within the meaning of Article 8(1)(b) of Regulation No 40/94 of 20 December 1993 on the Community trade mark. The Court of First Instance found that there was a likelihood of confusion on the part of the Spanish public between the marks 'KRAFFT' (Spanish national marks) cited in opposition and 'VITAKRAFT', the Community trade mark applied for. The Court of First Instance expressly based its deci-

sion on its own earlier decision in Case T-6/01 *Matratzen Concord v OHIM – Hukla Germany* (MATRATZEN) (upheld by order of the Court of Justice on 28 April 2004 in Case 3/03 P). However, in the appellant's view, that case concerned an entirely different situation and cannot be compared to the present case. The *Matratzen* case concerned a (conflicting) mark composed of three separate words, 'Matratzen Markt Concord', which in the view of the Court of First Instance was likely to be confused (also by the Spanish public) with the Spanish national mark 'MATRATZEN', the distinguishing element in the case being that the earlier Spanish mark 'MATRATZEN' was registered for the goods 'mattresses'; the German word 'Matratzen' (mattresses) was therefore monopolised in Spain as a mark, because the German clearly was not perceived as descriptive by the Spanish consumer. According to the appellant, however, such trade mark rights should, in a harmonised Europe, be granted only restricted protection in opposition proceedings against an application for a Community trade mark and, therefore, the appellant, first of all, fundamentally challenges the bias of the approach taken in the 'MATRATZEN' decision.

Furthermore, the appellant sets out the differences between the marks cited in opposition in the present case and those in the 'MATRATZEN' case, since in the case of the application for the Community trade mark 'VITAKRAFT' the Spanish consumer would have to separate, mentally or in terms of the typography or of the sound, the prefix 'VITA' from the whole mark 'VITAKRAFT' and there is no clear reason why this should be done. Finally, the appellant considers the problems for the free movement of goods which might conceivably arise if the bias of the 'MATRATZEN' decision is not properly adjusted.

Removal from the register of Case C-410/02 (¹)

(2005/C 45/34)

(Language of the case: English)

By order of 25 October 2004 the President of the Court of Justice of the European Communities has ordered the removal from the register of Case C-410/02: *Commission of the European Communities v Ireland*.

(¹) OJ C 7 of 11.1.03.