

- The Commission finds that the Pakistan customs authorities made an active error within the meaning of Article 220(2)(b) of Regulation No 2913/92 as regards preferential origin. The Commission wrongly takes the view that, as regards non-preferential origin, this error does not give rise to a special situation for the purposes of Article 239 of Regulation No 2913/92.
- It is not clear from the contested decision that the Commission genuinely weighed up the Community's interest in compliance with customs regulations against the interests of importers, acting in good faith, in not being subject to disadvantage beyond the normal commercial risks.
- It is not clear from the contested decision that the Commission took into account all the relevant facts in assessing whether the circumstances of the particular case give rise to a special situation.

Action brought on 19 May 2009 — Matkompaniet v OHIM — DF World of Spices (KATOZ)

(Case T-195/09)

(2009/C 180/100)

Language in which the application was lodged: English

Parties

Applicants: Matkompaniet AB (Borås, Sweden) (represented by: J. Gulliksson and J. Olsson, lawyers)

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

Other party to the proceedings before the Board of Appeal: DF World of Spices GmbH (Dissen, Germany)

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 March 2009 in case R 577/2008-2; and
- Order the defendant to pay the costs incurred both in the proceedings before the Court of First Instance and before OHIM.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark "KATOZ", for goods in classes 29, 30 and 31

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: German trade mark registration of the figurative mark "KATTUS" for goods in classes 29, 30, 31 and 33

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Upheld the appeal and partially rejected the application for the Community trade mark

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 207/2009 as the Board of Appeal wrongly concluded that there was a likelihood of confusion between the trade marks concerned.

Action brought on 20 May 2009 — Slovenia v Commission

(Case T-197/09)

(2009/C 180/101)

Language of the case: Slovene

Parties

Applicant: Republic of Slovenia (represented by Ž. Cilenšek Bončina, of the State Legal Service)

Defendant: Commission of the European Communities

Form of order sought

- annulment of the Commission's decision of 19 March 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF), (notified under document number C(2009) 1945, (1) in so far as it refers to the Republic of Slovenia;
- an order that the Commission should pay the costs;
- an order that the Commission should reimburse the costs incurred by the Republic of Slovenia in the proceedings.

Pleas in law and main arguments

By the contested decision the Commission excluded certain expenditure incurred by the Republic of Slovenia from Community financing for the financial years 2005 and 2006, on account of deficiencies in key controls and of incorrect control approach and tools, and also ordered a flat-rate financial correction of 5 % for immediate payment, for which it relied on the audit of national control carried out by its services in that Member State in March 2005.

In support of its claims the applicant argues, in particular, that the Commission:

- on account of a mistaken evaluation of the facts of the case, incorrectly applied Article 15 of Commission Regulation (EC) No 2419/2001 (2) or Article 23 of Commission Regulation (EC) No 796/2004, (3) for it carried out the audit too

late; it chose for it an atypical region for which conspicuously small fields were checked; in that audit it took no account of International Standard 530 on auditing and without cause it censured the applicant for using that standard as a yardstick;

- contravened the principle of the prohibition of unequal treatment of Member States, because it carried out its audit of national checks in the other Member States on a substantially greater, and therefore more representative, sample;
- applied a measure, namely the 5 % financial correction, which, on account of the limited risk to the Fund, considering the amount of the resources assigned, is plainly disproportionate to the gravity and extent of the infringements found to exist;
- acted contrary to the principle of good faith and fairness, for its services did not challenge the correctness of the instructions providing for the use of that yardstick, or, until autumn 2005, draw the problems to the applicant's attention.

⁽¹⁾ OJ L 75, 21.3.2009, p. 15.

⁽²⁾ Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11).

⁽³⁾ Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 18, p. 18).

Action brought on 22 May 2009 — Rügen Fisch v OHIM — Schwaaner Fischwaren (SCOMBER MIX)

(Case T-201/09)

(2009/C 180/102)

Language in which the application was lodged: German

Parties

Applicant: Rügen Fisch AG (Sassnitz, Germany) (represented by: O. Spuhler and M. Geiz, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Schwaaner Fischwaren GmbH (Schwaandorf, Germany)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 in Case R 230/2007-4;
- order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'SCOMBER MIX' for goods and services in classes 29 and 25 (Community trade mark No 3 227 031)

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Schwaaner Fischwaren GmbH

Decision of the Cancellation Division: dismissal of the application for a declaration of invalidity

Decision of the Board of Appeal: annulment of the decision of the Cancellation Division and partial declaration of invalidity of the Community trade mark

Pleas in law: Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009 ⁽¹⁾) on the grounds that the Community trade mark 'SCOMBER MIX' is not purely descriptive.

⁽¹⁾ Council Regulation (EC) No 207/2009 as of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)

Action brought on 25 May 2009 — Heinrich Deichmann-Schuhe GmbH & Co. v OHIM (Representation of a curved band with dotted lines)

(Case T-202/09)

(2009/C 180/103)

Language in which the application was lodged: German

Parties

Applicant: Heinrich Deichmann-Schuhe GmbH & Co. (Essen, Germany) (represented by C. Rauscher, lawyer)

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

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 April 2009 in Case R 224/2007-4; and
- Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a curved band with dotted lines for goods in Classes 10 and 24 (International Registration designating the European Community, No W 0881226)

Decision of the Examiner: Refusal of protection