JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

3 May 2006 *

In Case T-439/04,

Eurohypo AG, established in Eschborn (Germany), represented by M. Kloth and C. Rohnke, lawyers, with an address for service in Luxembourg,

applicant,

v

Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), represented by A. von Mühlendahl and J. Weberndörfer, acting as Agents,

defendant,

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 6 August 2004 (Case R 829/2002-4), relating to the registration of the word sign EUROHYPO as a Community trade mark,

* Language of the case: German.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of M. Jaeger, President, V. Tiili and O. Czúcz, Judges,

Registrar: C. Kristensen, Administrator,

having regard to the application lodged at the Registry of the Court of First Instance on 5 November 2004,

having regard to the response lodged at the Court Registry on 23 February 2005,

further to the hearing on 26 October 2005,

gives the following

Judgment

Background to the dispute

1 On 30 April 2002 the Deutsche Hypothekenbank Frankfurt-Hamburg AG, now Eurohypo AG, lodged an application for a Community trade mark at the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) under Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended.

2 The mark in respect of which registration was sought is the word sign EUROHYPO.

3 The services for which registration was sought are in Class 36 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and are described as follows:

'Financial affairs; monetary affairs; real estate affairs; provision of financial services, financing, financial analysis, investment affairs, insurance affairs'.

4 By decision of 30 August 2002 the examiner refused the application pursuant to Article 7(1)(b) and (c) and Article 7(2) of Regulation No 40/94.

5 On 30 September 2002 the applicant brought an appeal against the examiner's decision, the grounds of which are set out in a written statement lodged on 30 December 2002.

6 By decision of 6 August 2004 ('the contested decision'), the Fourth Board of Appeal partially upheld the appeal and set aside the examiner's decision as regards 'financial analysis, investment affairs, insurance affairs'. However, the appeal was dismissed as regards the other services in Class 36, namely, 'financial affairs; monetary affairs; real estate affairs; provision of financial services; financing'. Essentially, the Board of Appeal held that the word sign EUROHYPO was descriptive of those services, citing Article 7(1)(b) of Regulation No 40/94. It added that that was the case, in any event, in German-speaking countries, and that that ground was sufficient under Article 7(2) of Regulation No 40/94 to justify a refusal of protection. The Board of Appeal

also held that the elements 'euro' and 'hypo' contained a clearly understandable indication of the characteristics of the five services mentioned above, and that the association of those two elements in one word did not render the mark less descriptive.

Forms of order sought by the parties

7 The applicant claims that the Court should:

— annul the contested decision, insofar as it dismissed its appeal;

— order OHIM to pay the costs.

8 OHIM contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

9 The applicant raises two pleas: infringement of the first sentence of Article 74(1) of Regulation No 40/94 and infringement of Article 7(1)(b) thereof.

The first plea: infringement of the first sentence of Article 74(1) of Regulation No 40/94

Arguments of the parties

10 The applicant submits that the first sentence of Article 74(1) of Regulation No 40/94, which provides that '[OHIM] shall examine the facts of its own motion', requires that the examination of the facts must be sufficiently detailed as to enable OHIM to ascertain beyond doubt whether the grounds referred to in Article 7 of Regulation No 40/94 preclude the registration of the mark. OHIM has no discretion in that regard and the decision to register arises from a circumscribed power. Therefore, where there are no grounds for refusal, the applicant has a right to registration deriving from the fact that intellectual property, which includes trademark law, is a fundamental right recognised by Article 17(2) of the Charter of fundamental rights of the European Union proclaimed on 7 December 2000 at Nice (OJ 2000 C 364, p. 1) ('the Charter').

11 In this case the Board of Appeal based its decision solely on its conception of the two elements constituting the mark applied for, 'euro' and 'hypo', and its examination was not exhaustive, thereby preventing the public's perception of the word sign EUROHYPO from being properly assessed.

12 Furthermore, the contested decision merely makes findings in respect of the individual elements 'euro' and 'hypo', but contains no findings of fact as regards the descriptiveness of the full name 'eurohypo'. The applicant argues that if the Board of Appeal had conducted an Internet search it would have found that there is not one occasion on which that full name is used descriptively, but that every mention of that compound word refers to its undertaking. The applicant produces, in an annex

to the application, the first 100 results relating to the word 'eurohypo' of the 10 000 found on the Internet, in order to show that that sign is not used as a description of the financial services in question.

13 OHIM has also failed to establish that the relevant public would not perceive the mark EUROHYPO as an indication of origin.

14 OHIM contends that the first sentence of Article 74(1) of Regulation No 40/94 does not in any way specify the manner in which it must carry out the examination of the facts. As regards word marks, OHIM must take account of the way in which that word is usually understood by the public or part of the public to which the mark is addressed, but is not required to carry out a more detailed examination if the registrability of the trade mark can be excluded, taking account of the way in which the word at issue is usually understood. That was clearly the case in these proceedings.

15 Furthermore, the intellectual property right deriving from the Charter is not an absolute right and the grounds for refusal to register laid down in Article 7 of Regulation No 40/94 constitute limits of that right.

Findings of the Court

16 The applicant claims, in substance, that the contested decision infringes the first sentence of Article 74(1) of Regulation No 40/94, which provides that '[i]n proceedings before it [OHIM] shall examine the facts of its own motion', because the examination of the facts carried out by the Board of Appeal was not exhaustive.

17 According to settled case-law, the examination carried out by the competent trade mark authority must be a stringent and full examination in order to prevent trade marks from being improperly registered. Therefore it is necessary, for reasons of legal certainty and good administration, to ensure that trade marks whose use could successfully be challenged before the courts are not registered (see, with respect to First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), Case C-104/01 *Libertel* [2003] ECR I-3793, paragraph 59 and the case-law cited).

18 However, the first sentence of Article 74(1) of Regulation No 40/94 does not state how OHIM is to carry out an examination of the facts.

19 Furthermore, the Registrability of a sign as a Community trade mark must be assessed only on the basis of the relevant Community legislation as interpreted by the Community Courts. Therefore, it is sufficient that the Board of Appeal applied the descriptiveness test, as interpreted by the case-law, in order to reach a decision and it was not obliged to justify its action by the production of evidence (Case T-289/02 *Telepharmacy Solutions* v *OHIM (TELEPHARMACY SOLUTIONS)* [2004] ECR II-2851, paragraph 54, and Case T-19/04 *Metso Paper Automation* v *OHIM (PAPERLAB)* [2005] ECR II-2383, paragraph 34).

20 In this case the Board of Appeal analysed the meaning of the elements 'euro' and 'hypo' for the German consumer and the possible meanings of the compound word 'eurohypo' (paragraphs 13 to 16 of the contested decision). The finding that there are no references to further research in the statement of reasons of the contested decision, such as a statement of the results of an Internet search, is not sufficient to establish that the Board of Appeal has substituted its own interpretation of the word at issue for that of the relevant public. The fact that the Board of Appeal, being

sufficiently convinced of the descriptiveness of the elements 'euro' and 'hypo' and the word 'eurohypo' to refuse registration, chose not to carry out further research is not contrary to the first sentence of Article 74(1) of Regulation No 40/94.

21 Furthermore, as regards the fundamental nature of the right to intellectual property as derived, according to the applicant, from Article 17(2) of the Charter, which provides that '[i]ntellectual property shall be protected', it is sufficient to state that that right is not absolute and that the Community trade mark exists, inter alia, within the limits imposed by Article 4 in conjunction with Articles 7 and 8 of Regulation No 40/94.

22 Moreover, as regards the results of an internet search produced by the applicant in the annex to the application, it must be recalled that it is not the Court's function to review the facts in the light of evidence adduced for the first time before it. Facts relied on before the Court, without having been submitted previously before any of the bodies of OHIM, must be disregarded (see, to that effect, the judgment in Case T-237/01 *Alcon* v *OHIM — Dr Robert Winzer Pharma (BSS)* [2003] ECR II-411, paragraphs 61 and 62, confirmed on appeal by the order in Case C-192/03 P *Alcon* v *OHIM* [2004] ECR I-8993; Case T-128/01 *DaimlerChrysler* v *OHIM (Calandre)* [2003] ECR II-701, paragraph 18; Case T-129/01 *Alejandro* v *OHIM — Anheuser-Busch (BUDMEN)* [2003] ECR II-2251, paragraph 67; Case T-85/02 *Díaz* v *OHIM — Granjas Castelló (CASTILLO)* [2003] ECR II-4835, paragraph 46, and Case T-57/03 *SPAG* v *OHIM — Dann and Backer (HOOLIGAN)* [2005] ECR II-287, paragraph 20).

23 Finally, the applicant's arguments concerning the Board of Appeal's assessment of the relevant public's opinion of the descriptiveness or distinctive character of the word sign EUROHYPO, are directed against the correctness of the grounds of the contested decision. It is therefore appropriate to analyse them in the context of the examination of the second plea.

24 It follows from all the foregoing that the first plea must be dismissed.

The second plea: infringement of Article 7(1)(b) of Regulation No 40/94

Arguments of the parties

25 As a preliminary point the applicant states that the Board of Appeal based its decision to refuse registration solely on Article 7(1)(b) of Regulation No 40/94.

26 According to the applicant, the Board of Appeal rightly held that the elements 'euro' and 'hypo' could give rise to associations with the European currency and the word 'Hypothek' (mortgage) but disregarded the other possible meanings of those two elements. Thus, 'euro' does not only designate the currency of the European Union, but is also the abbreviation of 'Europe', as in the name of the 'Euro-fighter' aircraft or the name of one of the applicant's companies 'Eurohypo Europäische Hypothekenbank der Deutschen Bank AG'. The element 'hypo' is not necessarily linked to the word 'Hypothek', but comes from Greek, as shown by the German words 'Hypothese' (hypothesis), 'Hypotenuse' (hypotenuse), 'Hypochonder' (hypochondriac) or 'Hypozentrum' (hypocentre). Furthermore, the word used more frequently to designate a charge *in rem* encumbering real property is 'Grundschuld' (charge on real property). The abbreviation 'hypo' is unusual for the German public, unlike other abbreviations such as 'Disco' for 'Discothek' (discotheque) or 'Auto' for 'Automobil' (automobile).

27 The applicant further claims that the word sign EUROHYPO, considered as a whole, does not constitute a description of the services in respect of which registration has been refused. The word sign EUROHYPO is not generally used in German to describe financial services and the Internet search referred to in paragraph 12 above demonstrates that the use of that word in a descriptive manner is unusual.

28 The principles identified in Case C-383/99 P *Proctor & Gamble* v *OHIM* [2001] ECR I-6251 ('BABY-DRY') are wholly applicable in this case because the word 'eurohypo' constitutes a 'lexical invention' and not a customary term for the financial services in question. Furthermore, the absence of a hyphen between the elements 'euro' and 'hypo' emphasises the graphic fusion of those two elements, forming a very particular combination of words.

29 The fact that numerous other banks use 'hypo' in their trading name is evidence that combinations of words including 'hypo' are intended to designate commercial origin, particularly in the financial services sector in question. The word sign EUROHYPO can therefore be understood as an indication of the commercial origin of those services.

30 The applicant further submits that in order to assess whether a mark has a distinctive character it is appropriate to examine the use which has been made of it. On account of the widespread use of the sign EUROHYPO in the field of the services concerned and its high profile in the media the relevant public is accustomed to the use of that sign, which has therefore acquired the distinctive character necessary for the purpose of its registration as a trade mark. To illustrate the widespread use of 'eurohypo' the applicant produces in the annex to its application, in addition to the documents referred to in paragraph 12 above, the activity report of its group for 2003, a report on lending banks and information taken from its Internet site.

31 Furthermore, the suitability for registration of the word sign EUROHYPO is confirmed by the registration of the Swiss word mark No 03932/2002 EUROHYPO and the international word mark No 638974 EUROHYPO, with protection extended to Germany, Austria and Switzerland, which is the entire German-speaking area.

32 OHIM contends that the Board of Appeal did indeed base its decision, refusing the application for the mark EUROHYPO in respect of the services in question, on the provisions of Article 7(1)(b) and (c) of Regulation No 40/94, as those two provisions are expressly mentioned in the contested decision and their application is also clear from the content of that decision. Furthermore, the applicant deals separately with the two grounds for refusal in the application

33 OHIM maintains that the public perceives 'euro' as the currency of the European Union and that element would still be descriptive, even if it were given the meaning 'Europe', as it would give an indication of the territory on which those services are supplied. In the same way, 'hypo' is perceived by the public as the abbreviation of the word 'hypothek' (mortgage). Any other meaning of 'hypo' put forward by the applicant is irrelevant as it has no connection with the financial services concerned. The ambiguity of the words 'euro' and 'hypo' invoked by the applicant is also irrelevant.

34 In order to show that the element 'hypo' is a common abbreviation, OHIM produces, in the annex to its response, the results of an internet search which are admissible because the applicant already had, given the findings set out in the contested decision, all the information necessary to comprehend the decision and to challenge its legality before the Court (Case T-173/00 *KWS Saat* v *OHIM (Shade of orange)* [2002] ECR II-3843, paragraph 56 et seq., and Case T-216/02 *Fieldturf* v *OHIM (LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS)* [2004] ECR II-1023, paragraph 41).

35 The Board of Appeal also rightly held that the association of the two elements 'euro' and 'hypo' did not render the expression as a whole less descriptive. It describes for the average consumer, in relation to the services concerned, the offer of financing or administration of mortgage loans paid in the currency of the European monetary area.

36 Furthermore, OHIM states that the facts of BABY-DRY were very different from the present case as that case concerned an unusual association of words. However, the case-law concerning applications for registration of marks composed of the prefix 'euro' are particularly relevant and confirm OHIM's practice of regarding that element as having descriptive and non-distinctive character (Case T-359/99 *DKV* v *OHIM (EuroHealth)* [2001] ECR II-1645, paragraph 27).

37 OHIM recalls that a word mark which is descriptive of the characteristics of the goods or services concerned, for the purposes of Article 7(1)(c) of Regulation No 40/94 is, on that account, necessarily devoid of any distinctive character with regard to the same goods or services for the purposes of Article 7(1)(b) of the regulation (*TELEPHARMACY SOLUTIONS*, paragraph 19 above, paragraph 24).

38 As regards the distinctive character of the mark, EUROHYPO as a whole is not capable of distinguishing the applicant's services from those of other undertakings in the mind of the relevant public because it is a common configuration of words consisting of two descriptive indicators and, lacking an additional element of imagination.

39 As regards the widespread use of the mark, OHIM observes that if the applicant thereby seeks to rely on the distinctive character acquired by use under Article 7(3) of Regulation No 40/94, it must be pointed out that that argument was not raised in good time, since only a general reference to the applicant's position in the market was made during the proceedings before OHIM without any evidence being produced in support. The numerous documents produced for the first time in the course of these proceedings in order to establish the widespread use of the mark cannot be taken into consideration by the Court.

40 Finally, as regards the earlier national registrations, the applicant did not rely on them before either the examiner or the Board of Appeal. Furthermore, OHIM states that Community trade mark law constitutes an independent set of rules, and that the national registrations constitute at best evidence of the absence of grounds for refusal to register in the territories concerned.

Findings of the Court

41 It must be observed that, contrary to OHIM's submissions, it is clear from paragraph 12 et seq. of the contested decision that the decision to refuse registration of the word sign EUROHYPO, in respect of 'financial affairs; monetary affairs; real estate affairs, financial services, financing', refers only to Article 7(1)(b) of Regulation No 40/94. However, the analysis carried out in paragraphs 13 to 16 underpinning that decision to refuse registration concerns the descriptiveness of the word sign EUROHYPO.

42 It is settled case-law that each of the grounds for refusal to register listed in Article 7(1) of Regulation No 40/94 is independent and requires separate examination. Moreover, it is appropriate to interpret those grounds for refusal in the light of the general interest which underlies each of them. The general interest to be taken into consideration must reflect different considerations according to the ground for refusal in question (see Case C-329/02 P *SAT.1* v *OHIM* [2004] ECR I-8317, paragraph 25, and the case-law cited).

43 However, there is a clear overlap between the scope of the grounds for refusal set out in subparagraphs (b) to (d) of that provision (see *TELEPHARMACY SOLUTIONS*, paragraph 19 above, paragraph 23 and the case-law cited).

44 It is also clear from the case-law of the Court of Justice and the Court of First Instance that a word mark which is descriptive of the characteristics of the goods or services concerned for the purposes of Article 7(1)(c) of Regulation No 40/94 is, on that account, necessarily devoid of any distinctive character in relation to those goods or services within the meaning of Article 7(1)(b) (Case C-265/00 *Campina Melkunie* [2004] ECR I-1699, paragraph 19; Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 86; and *TELEPHARMACY SOLUTIONS*, paragraph 19 above, paragraph 24).

45 In this case, the assessment of the legality of the contested decision requires verification as to whether the Board of Appeal has established that the word sign EUROHYPO was descriptive of 'financial affairs; monetary affairs, real estate affairs, financial services, financing' within Class 36. If that is the case the refusal to register is the result of a correct application of both Article 7(1)(b) of Regulation No 40/94 and Article 7(1)(c) and the contested decision must be upheld. If, on the other hand, that sign is not descriptive of the goods and services covered by the application for registration, it is appropriate to verify whether the Board of Appeal has put forward any other grounds for finding that the mark applied for was devoid of any distinctive character.

46 It is settled case-law that a sign's descriptiveness can only be assessed by reference to the goods or services concerned and to the way in which it is understood by the intended public (Case T-356/00 *DaimlerChrysler* v *OHIM (CARCARD)* [2002] ECR II-1963, paragraph 25).

47 In this case, the services in respect of which registration was refused are all in the financial sector and are defined as 'financial affairs; monetary affairs; real estate affairs, financial services, financing'.

48 As regards the intended public, the Board of Appeal found that this was the average consumer. Since the services in question are financial services aimed at all consumers, that analysis, which is moreover not disputed by the applicant, must be confirmed. As the absolute ground for refusal was raised only in relation to one of the languages spoken in the European Union, namely German, the relevant public, in relation to which the descriptiveness of the mark must be assessed, is the average German-speaking consumer.

49 The Board of Appeal analysed the meaning of 'euro' and 'hypo' for the relevant public in paragraph 13 of the contested decision and concluded, in respect of each of those elements, that it was descriptive of the services in question.

50 In that connection, it must be recalled that a word sign is descriptive if at least one of its possible meanings designates a characteristic of the goods or services concerned (Case C-191/01P *OHIM* v *Wrigley* [2003] ECR I-12447, paragraph 32, and *PAPERLAB*, paragraph 19 above, paragraph 34).

51 First, the Court finds that the Board of Appeal rightly observed that the public concerned perceived 'euro', in the financial field, as the currency which is in circulation in the European Union and describes that monetary area. That element therefore designates, at least in one of its possible meanings, a characteristic of the financial services in question. The fact that 'euro' may, as the applicant claims, also be understood as the abbreviation of the word 'Europe' does not affect that finding.

52 Furthermore, the Board of Appeal rightly held that in the context of financial services 'hypo' was understood by the average consumer as an abbreviation of 'hypothek' (mortgage). That finding is not called into question by the fact that, as the applicant claims, that word may have other meanings in the medical field or Ancient

Greek. Since a mortgage is a standard guarantee in the financial field, particularly in the property field, the Board of Appeal was entitled to find that for the average German-speaking consumer one of the possible meanings of 'hypo' designated a characteristic of the financial services in question. In that connection, the applicant's argument, that the word most frequently used to designate a charge *in rem* encumbering real property is 'Grundschuld', is irrelevant, as it does not prevent 'hypo' from evoking a 'hypothek' for the average German-speaking consumer.

53 In that context, the documents containing the results of the internet search, produced was OHIM in the annex to its response, must, nonetheless, be declared inadmissible. As was stated in paragraph 22 above concerning the results of an internet search produced by the applicant in the annex to the application, facts relied on for the first time before the Court, without having been submitted previously before any of the bodies of OHIM, must be disregarded. In that connection, OHIM's argument, that that evidence is admissible because the applicant already had, in the light of the findings in the contested decision, all the guidance necessary to understand that decision and to contest its legality before the Court of First Instance, must be rejected. The judgments in *Shade of Orange* and *LOOKS LIKE GRASS... FEELS LIKE GRASS... PLAYS LIKE GRASS*, relied on by OHIM, concerned whether the fact that a Board of Appeal has omitted to communicate to one of the parties the results of an internet search referred to in its decision constituted an infringement of Article 73 of Regulation No 40/94. The solution identified in those judgments cannot, therefore, be transposed because, in this case, OHIM produces evidence before the Court of First Instance which was not taken into consideration by the Board of Appeal.

54 Since the word sign EUROHYPO is a compound word, it must still be determined whether the descriptiveness, established in respect of the elements of which it is composed, also exists in respect of the compound word itself. It is clear from the case-law that a mark consisting of a word composed of elements, each of which is descriptive of characteristics of the goods or services in respect of which registration is sought, is itself descriptive of the characteristics of those goods or services unless there is a perceptible difference between the word and the mere sum of its parts: that assumes either that because of the unusual nature of the combination in relation to

the goods or services the word creates an impression which is sufficiently far removed from that produced by the mere combination of meanings lent by the elements of which it is composed, with the result that the word is more than the sum of its parts, or that the word has become part of everyday language and has acquired its own meaning, with the result that it is now independent of its elements. In the latter case, it is then necessary to ascertain whether a word which has acquired its own meaning is not itself descriptive for the purposes of the same provision (*Koninklijke KPN Nederland*, paragraph 44 above, paragraph 104).

55 In the present cases the word sign EUROHYPO is a straightforward combination of two descriptive elements, which does not create an impression sufficiently far removed from that produced by the mere combination of the elements of which it is composed to amount to more than the sum of its parts. The applicant has not shown that that compound word had become part of everyday language and had acquired a meaning of its own. It argues, to the contrary, that the word sign EUROHYPO has not become part of everyday German for describing financial services.

56 Furthermore, contrary to the applicant's submissions, the solution identified in *BABY-DRY* cannot be transposed to this case. The term at issue in that case was a lexical invention which had an unusual structure, which is not the case for the word sign EUROHYPO.

57 The Board of Appeal thus lawfully found that the word sign EUROHYPO was descriptive of 'financial affairs; monetary affairs; real estate affairs, financial services and financing' in Class 36 and was, therefore, devoid of any distinctive character. It follows that, in accordance with the findings in paragraph 45 above, there is no need

to examine whether the Board of Appeal put forward other grounds for finding that the mark applied for was devoid of any distinctive character.

58 As regards the claim based on widespread use of the mark, since the applicant confirmed at the hearing that it had been relied on for the first time before the Court, that claim must be held to be inadmissible, together with the documents produced in support of it (see paragraph 30 above), in accordance with Article 135(4) of the Rules of Procedure, which states that the parties' pleadings may not change the subject-matter of the proceedings before the Board of Appeal. The arguments based on the national registrations of the word sign EUROHYPO in Germany, Austria and Switzerland, also raised for the first time before the Court, must be declared inadmissible for the same reasons. Furthermore, the Community trade mark regime is an autonomous system with its own set of rules and with objectives peculiar to it; it is self-sufficient and applies independently of any national system (Case T-32/00 *Messe München* v *OHIM (electronica)* [2000] ECR II-3829, paragraph 47).

59 It follows from all the foregoing that the applicant's second plea, alleging infringement of Article 7(1)(b) of Regulation No 40/94, must be dismissed.

60 Accordingly, the action must be dismissed in its entirety.

Costs

61 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's

pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs incurred by OHIM, as applied for by the latter.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the action.

2. Orders the applicant to pay the costs.

Jaeger Tiili Czúcz

Delivered in open court in Luxembourg on 3 May 2006.

E. Coulon M. Jaeger

Registrar President