Operative part

The Court declares that

1. Article 5(5)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 94/76/EC of 22 December 1994 by the introduction of transitional measures applicable, in the context of the enlargement of the European Union on 1 January 1995, as regards value added tax, is to be interpreted as meaning that there is no supply under a contract to make up work when a horse is trained to make it suitable for use as a riding horse or trained so as to make it capable of participating in (dressage) competitions and that a horse, in such circumstances, cannot be regarded as falling within the category of 'goods produced';

2. Whether or not value added tax is to be charged on amounts collected periodically as payment for the provision of services comprising the training of horses is to be determined according to the conditions laid down in Article 10(2) of the Sixth Directive.

Order of the Court (Fourth Chamber) of 1 June 2006 — Plus Warenhandelsgesellschaft v OHIM

(Case C-324/05 P)

(Appeal — Community trade mark — Article 8(1)(b) of Regulation (EC) No 40/94 — Likelihood of confusion — Application for mixed word and figurative mark containing the word element 'Turkish Power' — Opposition by the proprietor of the earlier word mark POWER — Rejection of the opposition — Appeal manifestly inadmissible or manifestly unfounded)

1. *Appeal — Grounds — Incorrect assessment of the facts — Whether admissible — Review by the Court of Justice of the assessment of the facts before the Court of First Instance — Excluded except in the case of distortion of the facts (Art. 225 EC; Statute of the Court of Justice, Art. 58) (see paras 28-29)*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an identical or similar earlier mark registered for identical or similar goods or services (Council Regulation No 40/94, Art. 8(1)(b)) (see para. 43)*

Re:

APPEAL brought against the judgment of the Court of First Instance (Fourth Chamber) of 22 June 2005 in Case T-34/04 *Plus Warenhandelsgesellschaft mbH* v *OHIM*, by which the Court of First Instance rejected the application for the annulment of the decision of the Second Board of Appeal of OHIM rejecting the appeal brought by the appellant, proprietor of the trade mark 'POWER', against the decision of the Opposition Division rejecting the opposition filed against the application for registration of the figurative mark 'TURKISH POWER' — Likelihood of confusion between trade marks

Operative part

The Court

1. Dismisses the appeal;

2. Orders Plus Warenhandelsgesellschaft mbH to pay the costs.