Operative part

The Court:

1. Annuls the judgment of the Court of First Instance of the European Communities of 22 February 2006 in Case T 74/04 *Nestlé* v *OHIM — Quick (QUICKY)* to the extent that, contrary to Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, the Court did not assess the visual similarity of the signs at issue by relying on the overall impression given by them;

2. Dismisses the appeal as to the remainder;

3. Refers the case back to the Court of First Instance of the European Communities;

4. Reserves the costs.

Order of the Court (Seventh Chamber) of 24 September 2007 — Torres v OHIM

(Case C-405/06 P)

Appeal — Community trade mark — Application for the figurative mark 'Torre Muga' — Opposition proceedings — Earlier international and national word mark 'TORRES' — Likelihood of confusion — Opposition rejected

1. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services (Council Regulation No 40/94, Art. 8(1)(b)) (see para. 32)*

2. *Appeals — Grounds — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted (Art. 225 EC; Statute of the Court of Justice, Art. 58, para. 1) (see para. 34)*

Re:

APPEAL against the judgment of the Court of First Instance (Second Chamber) of 11 July 2006 in Case T-247/03 *Torres* v *OHIM and Bodegas Muga*, by which the Court dismissed the action brought against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 April 2003 (Case R 998/2001-1) relating to opposition proceedings between Miguel Torres SA and Bodegas Muga SA.

Operative part

1. The appeal is dismissed;

2. Miguel Torres SA is ordered to pay the costs.

Judgment of the Court (Fifth Chamber) of 27 September 2007 — Commission v Luxembourg

(Case C-354/06)

Failure of Member State to fulfil obligations — Protection of the environment — Access to justice

Actions for failure to fulfil obligations — Examination of merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 7)