

Case T-151/01 R

Der Grüne Punkt — Duales System Deutschland AG

v

Commission of the European Communities

(Procedure for interim relief — Abuse of a dominant position —
Article 82 EC — Trade mark law — Prima facie case — Urgency —
Balance of interests)

Order of the Court of First Instance, 15 November 2001 II-3298

Summary of the Order

1. *Applications for interim measures — Suspension of operation of a measure — Suspension of operation of a decision requiring an undertaking to put an end to an infringement of competition law — Conditions for granting — Prima facie case — Examination of complex legal questions by the judge hearing the application for interim relief — Limits*
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Serious and irreparable damage — Standard of proof — Pecuniary damage*
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))
3. *Applications for interim measures — Suspension of operation of a measure — Interim relief — Conditions for granting — Urgency — Matters to be taken into consideration*
(Arts 242 EC and 243 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. The question whether the contractual terms which an undertaking imposes on the participants in its system, when use of a trade mark does not coincide with the actual use of the service it provides, are essential to protect the essential function of the trade mark in question, or abusive, in that they are unfair within the meaning of Article 82, second paragraph, (a) EC, is a complex matter. The in-depth analysis needed to resolve the problems raised by that matter cannot be carried out by the judge hearing the application for interim relief in an examination of the merits, *prima facie*, of the action in the main proceedings.

without suffering damage of that kind. It is not necessary for the imminence of the damage to be demonstrated with absolute certainty, it being sufficient to show that damage — especially if its occurrence depends on a series of factors — is foreseeable with a sufficient degree of probability. However, the party seeking the suspension of operation of the measure or the interim relief is required to prove the facts forming the basis of its claim that serious and irreparable damage is likely.

(see para. 185)

2. The urgency of an application for interim measures must be assessed in relation to the necessity for an interim order in order to prevent serious and irreparable damage to the party applying for those measures. It is for that party to prove that it cannot wait for the outcome of the main proceedings

Furthermore, damage of a pecuniary nature cannot, save in exceptional circumstances, be regarded as irreparable or even as reparable only with difficulty, since it can be the subject of subsequent financial compensation. In accordance with those principles, an interim measure would be justified if it appeared that, if it were not granted, the party who sought it would be put in

a position likely to jeopardise its existence before a final judgment was given in the main proceedings.

3. The urgency in granting an interim measure must result from the effects produced by the contested measure. For the purposes of that assessment, the response from the press to the decision whose suspension is sought and the possible harmful consequences of that for the applicant are irrelevant.

(see paras 187-188, 214)

(see para. 200)