



## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

### COMPETITION

- **“The Green Dot” found guilty of abusing its dominant position**

Following the CFI’s decision C–289/01 (24.05.), the Commission has taken the decision that the payment system operated by Duales System Deutschland AG (DSD), the creator of “The Green Dot” (Der Grüne Punkt) trademark, represents an abuse of a dominant position within the meaning of Article 82 of the EC Treaty. The market at stake is the market for organising the collection and recycling of sales packaging in Germany.

Under German packaging regulations suppliers must recuperate and recycle up to 70% of their packaging and submit audited documents to prove it. Using the Green Dot scheme operated by this company (DSD) is the suppliers’ main alternative. DSD is a not–for–profit organisation, separate from local municipal recycling schemes, which recovers and recycles, on behalf of its licensees, packaging put into circulation in Germany. It has a market share of at least 80%. A company wanting to sell its end–consumer products in Germany can apply to this company for a license. In return, it may print a Green Dot on its packaging indicating compliance with this scheme.



Pappas  
&  
Associates

*Attorneys at law*

## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

This green dot is a trademark and may only be used by licensees of DSD. The Green Dot helps inform end users that the supplier complies with German packaging regulations.

The Commission is attacking one provision of DSD's trademark agreement. It believes that, in certain cases, the company's payment system disadvantages its customers and prevents competitors from entering the market. According to the Commission, this is the case when DSD claims the full fee for use of its Green Dot trademark in situations where it provides no service because the collection and recycling is carried out by competitors. In that case, the basic principle should be: "no service, no fee", the Commission argues.

This decision should provide consumers with a better choice of service providers and lead to lower costs from companies complying with their environmental obligations. Above all, the emergence of competition in the waste recovery market should be boosted by favouring alternative service providers. Thus, DSD is no longer entitled to charge a fee in Germany for that part of the sales packaging bearing the "Green Dot" where it can be shown that the take-back and recovery obligation, as set out in the German packaging regulations, has been satisfied by another party.



## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

### ENTERPRISE

- **More competitive and sustainable European enterprises in a carbon constrained economy**

The fourth report of the High Level Group (HLG) on Competitiveness, Energy and the Environment entitled “Ensuring future sustainability and competitiveness of European enterprises in a carbon and resource constrained world” was adopted on 11 June 2007. Its message is clear: Markets must reward best performers, while ‘lead markets’ should further develop in order to help tackle the issues of climate change and attain sustainable use of resources. The position of the High Level Group was exposed in the context of the desperate need for action expressed within the framework of the Climate and Energy Package.

### ENVIRONMENT

- **REACH enters into force**

Amid the controversy which has surrounded it for the past three years, the new European legislation on chemicals, the so-called REACH (Registration, Evaluation, Authorisation and restrictions of Chemicals) Regulation, recently entered into force (see: Pappas & Associates Newsletter Dec/1 06, article “REACH programme – 2<sup>nd</sup> reading approaching”).



Pappas  
&  
Associates

*Attorneys at law*

## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

The main objectives of the REACH Regulation are firstly, to enhance protection of human health and the environment and secondly, to boost innovation and competitiveness of the European Union's chemical industry.

As such, the new European Chemicals Agency, which is located in Helsinki and is in charge of managing and implementing the new requirements, started to work on 1<sup>st</sup> June 2007 and is expected to become fully operational by 1<sup>st</sup> June 2008. By then, companies are due to start submitting pre-registrations and registration dossiers online. Environment Commissioner Stavros Dimas thinks that "the EU is providing itself with the most progressive chemicals legislation in the world". However, he is realistic in concurrently admitting that "much work remains to be done to protect our health and the environment from the dangers chemicals can pose". Competitiveness is another concern, for – especially small and medium-sized (SME) – enterprises should not unduly suffer much administrative burden and/or costs.

For now, the Agency's main task consists in providing companies, (especially SME), with enough information on how to comply with the new requirements. For this purpose the Agency is launching a multilingual website which serves as a one-stop shop for general information on chemicals, guidance documents and other helpful instruments on how to comply with the REACH Regulation.

## HEALTH & CONSUMERS

- Holiday makers better protected thanks to the revision of the Timeshare Directive

To match the rapid growth of the timeshare sector, the Commission recently adopted a proposal to deal with deficiencies of the 1994 EU Timeshare Directive by introducing a set of clear, modern and simplified rules. This directive gives consumers, who buy the right to spend a fixed amount of time each year at a holiday destination, a right to accurate information about what they are purchasing, prohibits deposits and a right to pull out and change their minds.

To begin with, the new rules will extend the scope of the directive by covering new products such as discount holiday clubs and so-called “timeshare-like products” (like holidays on boats and caravans). Moreover, people who sign contracts for less than three years and/or sell or exchange timeshares will be better protected. Therefore, the new legislation should ensure equal protection to consumers across different Member States. According to Consumer Commissioner Meglena Kuneva, it will create a level playing field for businesses throughout Europe.



## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

### INFORMATION & COMMUNICATION TECHNOLOGIES

- **EU YouTube initiative**

On June 29<sup>th</sup>, the Commission launched a new channel on the popular video sharing site You Tube ([www.youtube.com/eutube](http://www.youtube.com/eutube)). This initiative aims to inform citizens on the activities of the Union through comprehensive video clips. The topics cover a broad range of every-day life (cultural, environmental, health) issues and other important EU policies. It is expected to reflect the concerns and wishes of the Europeans and contribute towards establishing a new means of communication between the Union and its people.

Margot Wallström, Commissioner for Communications, made a point that the Commission will make use of all new channels to reach out to the citizens. Therefore, the popularity of video sharing sites such as YouTube is not to be ignored. The content of the portal is, for the time being, primarily in English and partly in German. French video versions and more official languages are expected to be added soon.



## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

- **Re-introduction of tariffs on ICT products and services**

The Information and Communication Technologies' industry (ICT) wants the Commission to amend the 1996 WTO trade rules on ICT products in line with technological progress and support the removal of tariffs for many electronic products. However, it warns the Commission against the re-introduction of tariffs, on the grounds that a given product set out in the 1996 WTO Information Technology Agreement (ITA) 'has become more technologically sophisticated and has additional functionality', as this contradicts the Commission's objective to boost market access. This would also contradict governments' statements in the ITA itself which state that "[e]ach party's trade regime should evolve in a manner that enhances market access opportunities for information technology products."

Indeed, the ICT sector believes that the Commission could be concealing excuses to raise tariffs on an increasing number of these products. The reason is that, with constant technology evolution, more and more ITA products (i.e. ICT equipment) inevitably become more sophisticated and multifunctional with time. Therefore, a chain-reaction of protectionist barriers could be raised up against an innovative component of the global economy. In addition, actors of the industry fear that the Commission's actions could defeat the ITA as a whole and have a negative impact on consumers and SMEs that will face higher tariffs.



## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

### INTELLECTUAL PROPERTY

- 'ROCKBASS' trade mark application rejected by the Court of Justice

In Case C- 301 /05 (June 7<sup>th</sup>), the European Court of Justice rejected the application to register 'ROCKBASS' as a Community trade mark. Warwick is a world-widely famous German musical gear factory. This trade mark was meant to be applied to a wide range of devices: technical sound equipment, mixing desks, sound effect equipment, amplifiers, loudspeaker boxes, active loudspeaker boxes (combos), containers, musical instruments, in particular guitars, guitar accessories, containers, as well as cases and bags for the aforesaid goods. The application was defeated on appeal mainly on the basis that the word was (1) devoid of distinctive character under Article 7(1)(b) of the EC Council Regulation No 40/94 of 20 December 1993 on Community trade marks, and (2) descriptive under Article 7(1)(c) of the same Regulation. Thus, it was incapable of becoming a trade mark.

- The Bud-cases saga in the European courts

Between 1996 and 1998, Anheuser-Busch, a renowned American alcoholic beverages' company, applied to the Office of Harmonisation of the Internal Market (OHIM) for registration of the words 'BUDWEISER' and 'BUD' and of a figurative sign containing the term 'BUDWEISER'.





Pappas  
&  
Associates

*Attorneys at law*

## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

These should be recognised as Community trade marks to be applied on various products including stationery, articles for cleaning purposes, clothing, pastry and confectionery (not beer). The same application for the figurative sign containing the term 'BUDWEISER' should also cover, in Class 32, the following goods in Class 32: 'beer, ale porter, malted alcoholic and non-alcoholic beverages'.

The Czech company Budejovicky Budvar brought opposition proceedings against the registration of all of the goods sought on the grounds that Anheuser-Busch breached appellations of origin [BUDWEISER BIER, BUDWEISER BIER-BUDVAR, BUDWESIER BUDVAR and BUD], which were previously registered for 'beer' under the Lisbon Agreement 1958 (as amended). Also, it argued that there was an international word mark BUDWEISER registered for 'beer of any kind'.

The OHIM rejected the oppositions brought by Budejovicky Budvar based on the appellations of origin used for goods other than beer. The Czech company formulated an appeal against this decision before the Court of First Instance of the European Communities (CFI). However, the OHIM did accept the Czech company's opposition against the registration of the figurative sign containing the term BUDWEISER in respect of 'beer, ale porter, malted alcoholic and non-alcoholic beverages'. In this case, the American company Anheuser-Busch appealed before the CFI (Case T-71/04).



Pappas  
&  
Associates

*Attorneys at law*

## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

On June 12<sup>th</sup>, the CFI found, firstly, that the appellations of origin relied on by Budejovicky Budvar are protected under the Lisbon Agreement only for beer and similar products. The Czech company had failed to prove, by providing too little evidence, the existence of the reputation of those appellations of origin in France (place where the alleged infringement occurred). Also, even if a reputation of the appellations of origin existed in France, it was not demonstrated how this would likely be weakened if Anheuser-Busch were allowed to use the signs in question on the goods sought. Therefore, the CFI upheld the OHIM's decision.

Furthermore, in Case T-71/04, Anheuser-Busch informed the Court on May 8<sup>th</sup> that it had withdrawn its application for registration of the figurative sign containing the term BUDWEISER as a Community trade mark for goods in Class 32. Thus, there was no need to adjudicate further in this case. If no appeal is lodged against these two CFI decisions within two months, this will be the end to the so-called "Budweiser saga".



Pappas  
&  
Associates

*Attorneys at law*

## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

### INTERNAL MARKET

- New Directive on public procurement to be introduced

Public procurement is the process of acquisition, usually by means of a contractual arrangement after public competition, of goods, services, works and other supplies. With more or less one fifth of all EU spending is devoted to it, it represents a key component of the internal market. The objectives of the new Directive, which is expected to come into force shortly, are to render public procurement processes more transparent. Also, businesses will be assisted in tackling various problems such as illegal award procedures, corruption and discrimination in favour of national entities. Moreover, the new legislation should ultimately help harmonise procedures across Member states.

The new rules will encourage businesses to bid for public contracts throughout the EU by providing bidders with effective remedies in case of unfairly or illegally awarded contracts. They introduce a so-called “standstill period” of 10 days, after the winner of the public contract has been designated, to allow other bidders to examine the decision and decide whether it should be reviewed. Ultimately, national courts are empowered, by means of European law, to call off public contracts if the latter have not being issued by a transparent competitive tendering procedure.



Pappas  
&  
Associates

*Attorneys at law*

## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

On June 21<sup>st</sup>, Members of the European Parliament approved on June 21<sup>st</sup> the text which amends existing legislation on public procurement. The new Directive should then formally be adopted by the Council and published in the Official Journal of the EU later this year. From then on, Member states will have two years to transpose it into their national laws.

### SPORTS

- [Pan-European forum launched to boost sport policymaking](#)

In the context of the annual Obesity Europe conference held on 26 and 27 June 2007 and of the Commission's adoption of a White Paper on sport due on 4 July, a new Council of Europe platform has been launched in order to boost the participation of sports' organisations in policymaking. Indeed, the so-called 'Enlarged Partial Agreement on Sport (EPAS)' was adopted in May 2007 by the Council of Europe's Committee of Ministers and officially instigated on June 18<sup>th</sup>. The EPAS aims at meeting new challenges, which derive, for example, from the fact that sport has become a global business. Also, EPAS will hopefully present innovative means of intergovernmental cooperation in the field of sport, such as action against fraud prevention and game fixing.



Pappas  
&  
Associates

*Attorneys at law*

## Pappas&Associates – Newsletter July (1) 2007 European Law & Policy

All countries, international sport federations and NGOs can participate in EPAS forum, the mission of which is to: (i) develop sports-policy strategies and set appropriate standards adapted to modern society, (ii) coordinate sports policies and standards among countries (iii), propose international topical policies and (iv) promote the development of sports as part of a healthy lifestyle. The new EPAS standards will not be binding. However, countries that choose to adhere show “political commitment” to carry them out. It is also believed that EPAS could serve as a useful basis for the creation of international treaties and other binding legal instruments in the sport sector.