



BUNDESPATENTGERICHT

28 W (pat) 13/04

(Aktenzeichen)

BESCHLUSS

In der Beschwerdesache

...

betreffend die Marke 300 12 302

hat der 28. Senat (Marken-Beschwerdesenat) des Bundespatentgerichts in der Sitzung vom 9. März 2005 unter Mitwirkung des Vorsitzenden Richters Stoppel sowie der Richterin Schwarz-Angele und des Richters Paetzold

beschlossen:

Es wird festgestellt, daß die Parteien folgenden Vergleich geschlossen haben (§ 278 Abs 6 ZPO):

PRIOR RIGHTS AGREEMENT

between

T... N.V.

H... Goeslaan

in E...

N...

- hereinafter called Proprietor -

and

D...

in T...

G...

- hereinafter called Applicant -

I.

1. Proprietor owns Community Trademark no. 000239905 «DAF» covering goods and services of classes 7, 12, 25, 32, 35, 36 and 37.
2. Applicant owns German Trademark no. 3001 2 302 »DAE« covering goods and services of classes 12, 37 and 39 which has been opposed by Proprietor.

II.

1. Applicant undertakes to derive no rights from the registration and use of the mark »DAE« against the mark »DAF« of Proprietor, in particular not to object to any re-registration of this mark or to the use and registration of marks similar thereto (with the exception of the mark »DAE«).
2. Applicant undertakes not to use the mark »DAE« for

Vehicles and apparatus for locomotion by land, air or water, with the exception of horse transporters, and not in connection with the maintenance of motor vehicles and not in connection with transport, with the exception of horse transporters.

Applicant undertakes further to restrict the list of goods and services of German trademark no. 300 12 302 »DAE« to

Class 12: "Pferdetransporter";

Class 37: "Bauwesen; Installationsarbeiten; Reparaturwesen, nämlich Reparatur, Wartung und Instandhaltung von Pferdetransportern",

Class 39: „Pferdetransporte; Verpackung und Lagerung von Waren; Veranstaltung von Reisen“.

III.

1. Proprietor undertakes to tolerate the registration and use of the mark »DAE« on the conditions set forth above under II.
2. Proprietor further undertakes to withdraw the opposition against German trademark no. 300 12 302 »DAE« after execution of this agreement and effecting the restriction according to II.2.

IV.

1. This agreement shall be valid for Germany. Applicant shall allow Proprietor to register and use his mark under comparable conditions in countries where Applicant has or acquires prior rights.
2. This Agreement shall be binding also for affiliated companies of the parties which use identical marks for the same goods. The parties further undertake to impose the obligations contained in this agreement onto their possible successors in right or title.

Stoppel

Paetzold

Schwarz-Angele

Bb