

INTERNATIONAL COURT OF APPEAL (I.C.A.)
of the
FEDERATION INTERNATIONALE DE L'AUTOMOBILE

Appeals lodged by

Österreichischer Automobil-, Motorrad- und Touring Club (ÖAMTC)
on behalf of its competitor Red Bull Racing
against Decisions No. 16, No. 17, and No. 18

Fédération Française du Sport Automobile (FFSA)
on behalf of its competitor ING Renault F1 Team
against Decisions No. 19, No. 20, and No. 21

Commissione Sportiva Automobilistica Italiana (CSAI)
on behalf of its competitor Scuderia Ferrari Marlboro
against Decisions No. 22, No. 23, and No. 24

– decisions taken by the Panel of Stewards on 26 March 2009
at the 2009 Grand Prix of Australia and
counting towards the 2009 FIA Formula One World Championship

Joined Cases 5 to 13/2009

Hearing of Tuesday 14 April 2009 in Paris

The FIA INTERNATIONAL COURT OF APPEAL (“the Court”), comprised of Mr. Pierre TOURIGNY (Canada), who was elected President, Mr. Philippe ROBERTI DE WINGHE (Belgium), Mr. Guido DE MARCO (Malta), Mr. Harry DUIJM (Netherlands) and Mr. John J. CASSIDY (U.S.A.), met in Paris on Tuesday 14 April 2009 at the Fédération Internationale de l'Automobile, 8 place de la Concorde, 75008 Paris.

The Court, ruling on the appeals filed by Österreichischer Automobil-, Motorrad- und Touring Club (“ÖAMTC”) on behalf of its competitor Red Bull Racing (“Red Bull”) against Decisions No. 16, No. 17, and No. 18 taken by the Panel of Stewards on 26 March 2009 at the 2009 Grand Prix of Australia; the appeals filed by Fédération Française du Sport Automobile (“FFSA”) on behalf of its competitor ING Renault F1 Team (“Renault”) against Decisions No. 19, No. 20, and No. 21 taken by the Panel of Stewards on 26 March 2009 at the 2009 Grand Prix of Australia; and the appeals filed by Commissione Sportiva Automobilistica Italiana (“CSAI”) on behalf of its competitor Scuderia Ferrari Marlboro (“Ferrari”) against Decisions No. 22, No. 23, and No. 24 taken by the Panel of Stewards on 26 March 2009 at the 2009 Grand Prix of Australia – counting towards the 2009 FIA Formula One World Championship –, heard presentations and considered arguments presented by Red Bull, Renault, Ferrari, the Fédération Internationale de l'Automobile (“FIA”), AT&T Williams (“Williams”), BMW Sauber F1 Team (“BMW”), Brawn GP F1 Team (“Brawn GP”), Panasonic Toyota Racing (“Toyota”) and Vodafone McLaren Mercedes (“McLaren”).

Attending the above hearing were:

for ÖAMTC and Red Bull:

Christian Horner (Team Principal)
Rob Marshall (Chief Designer)
Andrew McQueen (Legal representative)

for FFSA and Renault:

Pat Symonds (Executive Director of Engineering)
Andrew Ford (Legal representative)
Peter Leckey (Legal representative)

for CSAI and Ferrari:

Massimo Rivola (Sporting Director)
Nikolas Tombazis (Chief Designer)
Rory Byrne (Design Consultant to Ferrari)
Luca Colajanni (Press officer)
Nigel Tozzi QC (Legal representative)
Henry Peter (Legal representative)
Andrea Fioravanti (Legal representative)

for the FIA:

Pierre de Coninck (Secrétaire Général FIA Sport)
Sébastien Bernard (Head Legal Department FIA)
Charlie Whiting (Race Director)

for the Motor Sports Association (“MSA”):

Robert Jones (General Secretary)

for Williams:

Mark Biddle (General Counsel)
Adam Parr (CEO)
Tim Newton (Team Manager)
Sam Michael (Technical Director)
Jon Tomlinson (Head of Aerodynamics)

for Brawn GP:

Caroline McGrory (Legal Director)
Ross Brawn (Team Principal)
Craig Wilson (Chief Race Engineer)
Paul Harris (Legal representative)

for McLaren:

James Ingles (Senior Aerodynamicist)
Mark Hubbard (Legal representative)

for BMW:

Monisha Kaltenborn-Narang (General Manager Legal Services)
Willem Toet (Head of Aerodynamics)
Ian Meakin (Legal representative)

for Toyota:

Philippe Lambilliotte (General Counsel)
Mark Gillon (Panasonic Toyota Racing)
Pascal Vasselon (Panasonic Toyota Racing)
Jason Somerville (Panasonic Toyota Racing)
James Campbell (Legal representative)
Mark Phillips QC (Legal representative)

The parties presented oral arguments at the hearing, and answered questions put to them by the parties and by the Court. The hearing took place in accordance with the applicable rules, with the aid of simultaneous translation; no objection to any element of the simultaneous translation was raised. During the discussions, the adversarial principle was respected.

PROCEDURE AND FORMS OF ORDER SOUGHT BY THE PARTIES

1. ÖAMTC lodged appeals on behalf of its competitor Red Bull against Decisions No. 16, No. 17, and No. 18, respectively, taken by the Panel of Stewards on 26 March 2009 at the 2009 Grand Prix of Australia with the Court's Secretariat on 27 March 2009. These appeals were respectively assigned case numbers ICA 5 through 7/2009.
2. FFSA lodged appeals on behalf of its competitor Renault against Decisions No. 19, No. 20, and No. 21, respectively, taken by the Panel of Stewards on 26 March 2009 at the 2009 Grand Prix of Australia with the Court's Secretariat on 27 March 2009. These appeals were respectively assigned case numbers ICA 8 through 10/2009.
3. CSAI lodged appeals on behalf of its competitor Ferrari against Decisions No. 22, No. 23, and No. 24, respectively, taken by the Panel of Stewards on 26 March 2009 at the 2009 Grand Prix of Australia with the Court's Secretariat on 27 March 2009. These appeals were respectively assigned case numbers ICA 11 through 13/2009.
4. In this judgment, the Stewards' Decisions are referred to by their number. Where no numbering is indicated, the "Contested Decisions" collectively refers to the Stewards' Decisions numbered 16 through 24 inclusive. The parties submitting the appeals above are referred to as the "Appellants". The nine appeals that they have submitted are referred to collectively as the "Appeals".
5. Red Bull claims that the Court should:
 - admit its Appeals;
 - overturn Contested Decisions No. 16, 17, and 18;
 - disqualify the cars entered by Williams, Brawn GP and Toyota for the 2009 Grand Prix of Australia and for any other race in which they may have participated using a Contested Design Concept device.
6. Renault claims that the Court should:
 - admit its Appeals;
 - overturn Contested Decisions No. 19, 20, and 21;
 - find that the cars of the teams Williams, Brawn GP and Toyota did not comply with Article 3 of the 2009 FIA Formula One Technical Regulations;
 - find that Williams, Brawn GP, and Toyota did not comply with Article 2.4 of the 2009 FIA Formula One Technical Regulations;

- disqualify the cars of Williams, Brawn GP and Toyota from the Grand Prix of Australia and remove the points awarded to these teams and their drivers;
 - in the event these teams have competed in the Grand Prix of Malaysia using the contested diffusers, disqualify the cars of Williams, Brawn GP and Toyota from the Grand Prix of Malaysia and deduct points awarded to these teams and their drivers.
7. Ferrari claims that the Court should:
- admit its Appeals;
 - overturn Contested Decisions No. 22, 23 and 24;
 - disqualify the cars entered by Williams, Brawn GP and Toyota for the 2009 Grand Prix of Australia and for any other race in which they may have participated using a contested diffuser device;
 - remove the points awarded to Williams, Brawn GP and Toyota and their drivers.
8. The FIA, in its defence, claims that the Court should:
- dismiss all of the arguments of all of the Appellants as unfounded;
 - confirm the Contested Decisions.

APPLICATIONS BY AFFECTED PARTIES TO BE HEARD

9. The Court received applications to be heard in the present cases from McLaren and BMW, in support of the Appellants, and applications to be heard from Williams, Brawn GP, and Toyota, in support of the FIA.

Findings of the Court

10. Under Article 21 of the ICA Rules of Procedure, the Court may hear any competitor in a major FIA Championship who so requests and who could be directly and significantly affected by the decision to be taken. The 2009 FIA Formula One World Championship is a major Championship.
11. The Court is of the opinion that its decision is likely to have direct and significant effects upon McLaren, BMW, Williams, Brawn GP and Toyota and therefore granted these teams the right to be heard.
12. McLaren and BMW accordingly submitted memoranda in support of the submissions of Renault, Red Bull and Ferrari.

13. Williams, Brawn GP and Toyota accordingly submitted memoranda in support of the FIA's submissions. These three teams are hereafter referred to as the "Contested Design Teams".

ADMISSIBILITY AND JURISDICTION

14. The Court recognises that the Appeals were filed in a timely manner, that the Appeals are admissible and that the Court has jurisdiction in the matter.

REMINDER OF THE FACTS

15. The Appeals concern diffusers, being devices that manage the air flow underneath the car so as to lower the air pressure under the car, thereby maximizing downforce and hence performance.
16. The diffusers used by the Contested Design Teams may differ somewhat in design, but are all based on a similar concept that is contested in the current Appeals (the "Contested Design Concept").
17. Ferrari, Renault and Red Bull, believing the Contested Design Concept to be illegal, lodged protests with the Stewards at the 2009 Grand Prix of Australia, asking the Stewards to declare that the cars of the Contested Design Teams were ineligible to participate. The Stewards, having examined the cars and the deployment of the Contested Design Concept in some detail, declared the cars of the Contested Design Teams compliant and rejected the protests of Ferrari, Renault and Red Bull. The present Appeals were thereafter submitted.
18. The regulations relevant to this case are the 2009 FIA Formula One Technical Regulations ("TR"), and in particular:

2.4 Compliance with the regulations

Automobiles must comply with these regulations in their entirety at all times during an Event. Should a competitor introduce a new design or system or feel that any aspect of these regulations is unclear, clarification may be sought from the FIA Formula One Technical Department. If clarification relates to any new design or system, correspondence must include:

- a full description of the design or system;
- drawings or schematics where appropriate;
- the competitor's opinion concerning the immediate implications on other parts of the car of any proposed new design;
- the competitor's opinion concerning any possible long term consequences or new developments which may come from using any such new designs or systems;
- the precise way or ways in which the competitor feels the new design or system will enhance the performance of the car.

2.7 Duty of Competitor

It is the duty of each competitor to satisfy the FIA technical delegate and the stewards of the meeting that his automobile complies with these regulations in their entirety at all times during an Event.

3 Bodywork and dimensions

One of the purposes of the regulations under Article 3 is to minimize the detrimental effect that the wake of a car may have on a following car.

Furthermore, infinite precision can be assumed on certain dimensions provided it is clear that such an assumption is not being made in order to circumvent or subvert the intention of the relevant regulation.

[...]

3.12 Bodywork facing the ground

3.12.1: All sprung parts of the car situated from 330mm behind the front wheel centre line to the rear wheel centre line which are visible from underneath, must form surfaces which lie on one of two parallel planes, the reference plane or the step plane. [...]

3.12.3: The surface lying on the reference plane must be joined around its periphery to the surfaces lying on the step plane by a vertical transition. If there is no surface visible on the step plane vertically above any point around the periphery of the reference plane, this transition is not necessary.

[...]

3.12.5: All parts lying on the reference and step planes, in addition to the transition between the two planes, must produce uniform, solid, hard, continuous, rigid (no degree of freedom in relation to the body/chassis unit), impervious surfaces under all circumstances.

Fully enclosed holes are permitted in the surfaces lying on the reference and step planes provided no part of the car is visible through them when viewed from directly below. [...]

[...]

3.12.7: No bodywork which is visible from beneath the car and which lies between the rear wheel centre line and a point 350mm rearward of it may be more than 175mm above the reference plane. [...]

ON THE SUBSTANCE

19. The Court has considered the submissions and arguments of all parties, which it has grouped in a series of consolidated pleas.
20. In advance of the hearing, the Court indicated to the parties that it intended, to the extent possible, to resolve this case based on the principles underlying the Contested Design Concept to preserve the confidentiality of each team's particular design. For this reason, parties were invited to make submissions to the Court which addressed the Contested Design Concept but did not include confidential technical information. The Court indicated to the parties that, having heard submissions regarding the Contested Design Concept, it would, only if necessary, examine confidential information. During the hearing, no party argued that the Court would be able to resolve this case only by examining confidential information. Having considered the written and oral submissions, the Court has concluded that it is in a position to issue its ruling on the validity of the Contested Decisions based solely on the principles underlying the Contested Design Concept.

First Plea – The Contested Decisions are Insufficiently Motivated

a) Arguments of the parties

21. Ferrari contests the validity of the Contested Decisions on the grounds that they violate paragraph 6.10 of the Formula One Guidelines for Stewards, which, according to Ferrari, states that “decisions may be brief but must clearly state the reasons for the decision”. Ferrari and Renault note that the Stewards failed to provide any reasons for their decisions or even to identify the relevant articles of the TR with which they had decided that the cars complied.
22. Brawn GP and Toyota submit that it is obvious from the context what the reasons for the Contested Decisions were and that those reasons were clear to the Appellants. Given the confidential nature of the material on which the Contested Decisions were based, the Stewards were correct to give their reasoning in broad terms only.

b) Findings of the Court

23. The Court notes that the “Guidelines for Stewards” were not submitted to it by any party and that this document does not form part of the regulations governing the 2009 FIA Formula One World Championship.
24. However, on the general principle, the Court finds that it is desirable to state reasons so that addressees of decisions can be put in a position to understand the decisions that affect them and to assert and defend their rights as necessary. While it may have been preferable in this case for the Stewards to give further reasons, the Court finds that in this specific case the addressees of the Contested Decisions were in a position to know precisely which arguments had been accepted or rejected by the Stewards given that detailed arguments and protests had been submitted, including arguments proposing specific interpretations of the applicable regulations, and these interpretations were rejected in clear terms by the Stewards. The Appellants were therefore in a position to assert their rights of defence and appeal. This is further evidenced by the comprehensive appeals they have in fact submitted. In light of the foregoing, the First Plea must be denied.

Second Plea – The Contested Design Teams Did Not Disclose the Possible Long Term Consequences from Using a New Design and Did Not Seek Clarification from the FIA Technical Department, in Breach of Article 2.4 TR

a) Arguments of the parties

25. The Appellants submit that Williams, Brawn GP, and Toyota breached Article 2.4 TR, which states:

Should a competitor introduce a new design or system or feel that any aspect of these regulations is unclear, clarification may be sought from the FIA Formula One Technical Department. If clarification relates to any new design or system, correspondence must include:

- a full description of the design or system;
- drawings or schematics where appropriate;
- the competitor's opinion concerning the immediate implications on other parts of the car of any proposed new design;
- the competitor's opinion concerning any possible long term consequences or new developments which may come from using any such new designs or systems;
- the precise way or ways in which the competitor feels the new design or system will enhance the performance of the car.

The Appellants state the Contested Design Concept constitutes a new design and that it is unlikely that such clarification was sought, or in case it was sought, it is unlikely to have included the information required by Art. 2.4 TR. The Appellants submit that the Stewards' conclusion that the contested designs are legal has been made without consideration of some or all of the items of correspondence required by Art. 2.4 TR. They express concern that, as a consequence, the Contested Decisions were based on misleading or incomplete information.

26. In this regard, Renault adds that notwithstanding the wording in Art. 2.4 TR that clarification "may be sought" from the FIA, in reality, it is a requirement under Art. 2.4 TR that clarification is sought from the FIA when it comes to new designs or systems that may be illegal. In support of this, Renault refers to a decision of this Court of 22 August 2006 regarding the legality of Renault's Tuned Mass Damper, in which the Court agreed with a statement by Mr. Whiting that Renault should have made a request for clarification under Art. 2.4. TR and held that:

[...] it is however necessary, for any future developments that might apply to similar devices, to refer to Article 2.4 of the Technical Regulations which allows competitors to justify the innovations which are suggested, and to obtain official clarification from the FIA in this respect [...]

27. The FIA and the Contested Design Teams contest this argument on the basis that Art. 2.4 TR is voluntary – it only invites a team to seek the view of the FIA Technical Department as to the legality of a new design; it does not require a team to do so.
28. The FIA and the Contested Design Teams further submit that a clarification under Art. 2.4 TR would not have been appropriate as the Contested Design Concept is not new. While there may be novel aspects to the Contested Design Concept, secondary or central diffusers have been widely used by many teams in the past.
29. The FIA and Brawn GP argue that Renault's reliance upon the Tuned Mass Damper appeal is misconceived, as the "Tuned Mass Dampers" referred to in that appeal had not been seen on Formula One cars before (unlike diffuser

devices) and hence there was a better argument for a clarification under Art. 2.4 TR in that case.

30. Brawn and Toyota further submit that, in any event, failure to obtain Art. 2.4 TR clarification does not render a compliant car non-compliant with the TR; what counts is satisfying the Technical Delegates at scrutineering and satisfying the Stewards at any protest, which has now been done twice.

b) Findings of the Court

31. The Court denies the Second Plea on the grounds that the wording of Art. 2.4 TR that “clarification may be sought” clearly indicates that there is no obligation, even in circumstances where a new design or system has been created, for competitors to seek a clarification from the FIA Technical Department. Rather, under Article 2.7 TR, it is the duty of each competitor to satisfy the FIA Technical Delegate and the Stewards that his car complies with the relevant regulations.

Third Plea – The Contested Design Concept is Inconsistent with the Preamble to Article 3 TR and with the Efforts of the FIA Overtaking Working Group and the FIA to Facilitate Overtaking

a) Arguments of the parties

32. The Appellants allege that the Contested Design Concept is not in compliance with either the conclusions of the FIA Overtaking Working Group (the “OWG”) or the spirit of such conclusions, which are set out in the preamble to Article 3 TR.
33. The OWG was tasked with proposing a new set of regulations for the 2009 Formula One season in order to reduce the aerodynamic disadvantage (or “wake”) suffered by a competitor’s car when following another car during a race and accordingly, to make overtaking less difficult. The Appellants submit that the OWG had the stated aim to reduce downforce by up to 50% of 2006 levels. Based, *inter alia*, on advice from the OWG, the FIA amended Article 3 TR. Some of these amendments resulted in: changes to the front and rear wing; shifting the rear diffuser backwards by 330mm; limiting the height of the diffuser visible from below to 175mm; and extending the rear limit of the diffuser so as to prevent the rear wing and diffuser from working in combination. The changes to Article 3 TR also included the addition of a preamble, the first sentence of which states:

One of the purposes of the regulations under Article 3 is to minimise the detrimental effect that the wake of a car may have on a following car.

34. The Appellants argue that, by circumventing the TR, the cars of the Contested Design Teams produce levels of downforce that defeat the purpose of the OWG and undermine the intention and effect of the changes to Art. 3 TR. The Appellants further allege that the diffusers used by the Contested Design Teams will make overtaking harder – by making it more difficult to maintain performance in a wake and by increasing cornering speeds – contrary to the stated goals of the FIA, the OWG and the objectives of the changes to the rules concerning aerodynamics.
35. Ferrari submits that the first sentence of the preamble and the historical development and context of Art. 3 TR clearly demonstrate the intention of Art. 3 TR (namely, to facilitate overtaking and decrease the detrimental effect of the wake), and argue that in the event of any ambiguity this Article should be interpreted in accordance with its intention.
36. Toyota submits that Art. 3 TR is not ambiguous, implying that it is not necessary to turn to the preamble to interpret the various provisions of Art. 3 TR. Brawn GP and Williams, on their part, argue that the first sentence of the preamble and the intentions of the OWG cannot be used to override the TR, as the words used in the preamble cannot be enforced on their own nor can they overrule the precise wording used in the provisions of the TR themselves.
37. The Contested Design Teams further argue that, in any event, it has not been proven that the Contested Design Concept has a detrimental effect on the car's wake. They submit that the Contested Design Concept is not contrary to the intentions of Art. 3 TR.
38. The FIA argues that the preamble was not intended as an operative provision which could give rise to a penalty, but was added to explain the context so that the Technical Working Group (“TWG”) might take action in the future if it agreed that previous levels of downforce were being regained. The FIA relies, in this regard, on minutes from a TWG meeting in March 2008 which state:

Mr WHITING said that rather than an instrument for penalising offenders the paragraph was intended as a safeguard, which would allow the changing of the regulations if the F1TWG considered that 2006 levels of downforce were being regained.

b) Findings of the Court

39. With respect to the intentions of and the work done by the OWG, the Court holds that the OWG is merely an advisory body and that it does not have rule-making authority.
40. The Court takes notice of the first sentence of the preamble to Article 3 TR. While it may be possible for the Court to seek to interpret an ambiguous text in light of this preamble, it is not possible for the Court to depart from or ignore the unambiguous text of the regulations to give effect to the general statement set out in the first sentence of the preamble. Nor is the first sentence of Art. 3

TR specific enough to be capable of enforcement on its own or of being regarded as a rule which can conflict with the explicit terms of the remainder of Art. 3 TR.

41. Moreover, no party has submitted conclusive evidence demonstrating to the Court that the use of the Contested Design Concept increases the detrimental effect that the wake of a car may have on a following car, and indeed some evidence to the contrary was submitted.
42. Therefore, the Court takes account of the first sentence of the preamble to Art. 3 TR, the work of the OWG and the historical development of Art. 3 TR, though notes that doing so will have a limited effect on this case as the Court does not consider that it has conclusive evidence regarding the wake of cars using the Contested Design Concept. In addition, for the most part the text of Art. 3.12 is unambiguous and therefore interpretation will play a limited role.
43. Therefore, the Court denies the Third Plea.

Fourth Plea – The Design of the Bodywork violates Article 3.12 TR

44. The Contested Design Teams base the legality of the Contested Design Concept *inter alia* on Article 3.12.3 TR, which provides that:

The surface lying on the reference plane must be joined around its periphery to the surfaces lying on the step plane by a vertical transition. If there is no surface visible on the step plane vertically above any point around the periphery of the reference plane, this transition is not necessary.

45. The Contested Design Teams submit that they have shaped the step and reference planes to prevent them from overlapping at various points, so that vertically above these points on the reference plane, the step plane is not visible. As there is no surface visible on the step plane vertically above the periphery of the reference plane at these points, the transition is not necessary and has not been placed. There continue to be transitions joining the points where the step and reference planes overlap.
46. Thus, rather than having just one continuous transition, the Contested Design Concept involves the use of multiple vertical transitions between which air may pass (rather than a single continuous transition through which air may not pass). The spaces between these multiple vertical transitions allow air to be channeled towards an additional diffuser which is not visible from directly beneath the car (as it is placed above the visible lower diffuser).
47. The Contested Design Teams argue that there is no provision of the TR which prevents them from shaping the step and reference planes (provided each surface remains continuous), including by having ‘cut-aways’ upon the peripheries of these surfaces. They point to examples of the cut-away or

shaping used by all teams at the periphery of the step plane to accommodate the rear tires.

48. The Appellants argue that the Contested Design Concept contravenes Art. 3.12 of the TR for several reasons. First, the second sentence of Art. 3.12.3 TR is intended to refer only to the front of the car where the reference plane extends without a step plane anywhere above it. Second, the multiple transitions upon which the Contested Design Teams rely are not permitted. Third, that Art. 3.12.3 TR must be seen in the context of the rest of Art. 3 and in particular the preamble (noting that one of the purposes of the regulations is to minimize the detrimental effect that the wake of a car may have on a following car) and Art. 3.12.5 TR (requiring transitions to be solid, hard, continuous, rigid, impervious surfaces, thereby prohibiting the use of multiple transitions between which air may pass). They contend that the interpretation relied upon by Brawn GP, Toyota and Williams exploits a 'loophole' and is not what the regulation was intended to mean as it would permit the existence of what is, in their view, a 'hole' in the transitions towards the rear of the car, and permit diffuser devices which cause detrimental effects on the wake of the car which will in turn render overtaking more difficult. Fourth, the Appellants argue that the spaces through which air passes in the Contested Design Concept are holes and that the only holes permitted in the bodywork are the 'fully enclosed holes' described in Art. 3.12.5 TR (which these 'holes' do not comply with). Finally, the Appellants contend that the Contested Design Concept involves a diffuser which is in excess of 175mm in height above the reference plane and begins to direct air from a point forward of the rear wheel centre line in breach of Art. 3.12.7 TR.

49. The Court will address each of these arguments in turn.

Article 3.12.3 TR was not intended to permit the absence of a transition towards the rear of the car

a) Arguments of the parties

50. The Appellants argue that the Contested Design Teams place reliance on Art. 3.12.3 TR for the validity of the Contested Design Concept at the rear of the car, while this provision was intended only to refer to the parts of the car where the reference plane extends without a step plane anywhere above it (i.e. the front of the car). The Appellants invite the Court to interpret Art. 3.12.3 TR in such a way as to give effect to the overall objective (noted in the first sentence of the preamble to Art. 3 TR) of facilitating overtaking by finding that this provision cannot be applied to bodywork towards the rear of the car.

51. The Contested Design Teams argue that Art. 3.12.3 TR contains no wording limiting its application to the front of the car.

b) Findings of the court

52. The Court finds no basis for the argument that Art. 3.12.3 TR applies only to the front of the car, and not the rear of the car. As noted in response to the Third Plea above, the Court may have regard to the overall objective as an aid to interpretation in circumstances where a text is ambiguous. However, this would not permit the Court to conclude that the scope of Art. 3.12.3 TR is limited to the front of the car when there is no support for such a conclusion in the text itself. In any case, as noted above, it has not been proven that the interpretation sought by the Appellants would in fact facilitate overtaking. This argument must therefore be rejected.

Multiple Transitions

a) Arguments of the parties

53. The Appellants submit that Articles 3.12.3 TR and 3.12.5 TR use the singular term “vertical transition”. This, the Appellants submit, shows that the TR envisage the existence of one single vertical transition joining the periphery of the surface lying on the reference plane to the surfaces of the step plane, and, where any of the Contested Design Teams have used additional vertical transitions in the rear of the car, this constitutes a breach of Art. 3.12.3 TR.

54. The Contested Design Teams submit that Art. 3.12.3 TR does not say there must be just one continuous transition that must run around the entirety of the periphery of the reference plane nor do they require the step plane to be vertically above every point of the reference plane. What is required is a transition at any point where the surface of the step plane is visible vertically above the reference plane. The possibility of using multiple transitions is moreover confirmed by the use of the plural “vertical transitions” in Art. 3.12.4 TR.

55. The FIA submits that, although Art. 3.12.3 TR refers in places to “transition” in the singular, each car in fact requires a minimum of two transitions to comply with the TR. The FIA Technical Department has, therefore, always taken the view that more than one transition is not only permitted, but is in fact required.

56. The FIA and the Contested Design Teams refer to the existence of several examples (from previous seasons) of multiple vertical transitions being used by teams, including each of the Appellants.

57. At the hearing, Ferrari acknowledged that multiple vertical transitions had been used by many teams in the past, including Ferrari itself, and argued that all such prior uses (including its own) had constituted a technical violation of the TR which had been tolerated. However, it argued that where multiple transitions had been used at the front of the car, rather than the rear, this constituted only a minor breach which could have been easily remedied, had it been necessary to

do so, without a significant detriment to performance. Ferrari contends that multiple vertical transitions at the rear of the car have not been seen before and constitute a more serious violation which should not be tolerated.

b) Findings of the Court

58. The Court concludes that the language used in Art. 3.12 TR does not explicitly restrict the number of vertical transitions to one. Several teams, including the Appellants have themselves used multiple vertical transitions in the past. Art. 3.12.4 TR refers to “vertical transitions” in the plural. Moreover, it appears that the idea that only one single transition must be used, if accepted, would mean that it would not be possible to have a transition on each of the two sides of the car.

59. The Court therefore finds that, in concept, having more than one vertical transition between the step and reference planes is not prohibited by the TR.

Article 3.12.3 TR must be seen in the context of the rest of Article 3 TR and Article 3.12.5 TR, requiring transitions to be solid, hard, continuous, rigid, impervious surfaces, thereby prohibiting the use of multiple transitions between which air may pass

a) Arguments of the parties

60. The Appellants submit that the Contested Design Concept contravenes the first sentence of Art. 3.12.5 TR because the presence of airways on the underbody of the car (i.e. between the vertical transitions used) necessarily means that the relevant surfaces cannot be solid, hard, continuous, rigid, impervious surfaces. They argue that any interpretation which would allow such airways cannot give effect to the purpose of the regulations as described in the first sentence of the preamble to Art. 3 TR.

61. The Contested Design Teams argue that the first sentence of Art. 3.12.5 TR is fully complied with, as all parts lying on the reference and step planes, in addition to each individual one of the transitions between the two planes are solid, hard, continuous, rigid and impervious (though there may be spaces between these separate individual surfaces).

62. The Contested Design Teams argue that the terms of Art. 3.12.5 TR, including the terms “continuous” and “impervious”, refer to each separate surface, including each separate vertical transition as they connect the reference plane and step plane, and does not mean that all surfaces of all transitions must be considered together as a single surface which is continuous and impervious.

63. Brawn GP also submits that the correct analysis is that surfaces lying on different planes can be “continuously” connected by a line that goes through different geometric planes.

64. The FIA contends that each of the transition surfaces must be continuous and impervious, but that there is no requirement for separate transitions to be regarded as a single continuous and impervious surface. The FIA accepts that if the reference plane, the step plane, and the transitions were to be treated as a single surface, then the spaces between them (together with any adjacent cut outs to the surfaces of the step or reference planes) would not be continuous or impervious. Indeed, these surfaces have been designed in such a way as to allow air to pass through the spaces between them. However, the FIA argues that these surfaces have always been treated individually; there is no reference in the TR to the surfaces being treated as one; and an expression such as "...the surface thus formed..." would have been used in Art. 3.12.5 TR if continuity between the surfaces (the FIA notes that the various references to "surfaces" are plural) were required or intended.

b) Findings of the Court

65. The Court does not accept the argument by Brawn GP that surfaces lying on different planes can be "continuously" connected by a line that goes through different geometric planes. If this were correct, then every part of the car and everything in physical contact with it could be deemed "continuous" and the term would serve no purpose.

66. However, the Court finds that the first sentence of Art. 3.12.5 TR does not state that it is necessary to view the reference plane, step plane and the transition as one single surface. Therefore, as long as each individual step plane, reference plane, and transition fulfils the criteria set out under Art. 3.12.5. TR (namely "solid", "hard", "continuous", "rigid" and "impervious"), Art. 3.12.5 TR is complied with.

67. The fact that multiple vertical transitions are permitted necessarily implies that such transitions might not be joined to each other and therefore that there may be spaces between those transitions.

68. The Court accepts that this leads to the result that a single transition including, for example, a fully enclosed hole, would not be permitted as this single transition would not be continuous and impervious, though two transitions with a space between them would be permitted. This is the necessary result of the TR as written.

69. In reaching the conclusion that the first sentence of Art. 3.12.5 TR applies to each surface individually (and not the surfaces collectively), the Court is mindful of the first sentence of the preamble to Art. 3 TR. However, as noted above, the text of 3.12.5 is unambiguous and it has not been proven that this interpretation of Art. 3.12.5 TR (or indeed the entire Contested Design Concept) has effects detrimental to overtaking. Therefore, the first sentence of the preamble to Art. 3 TR is of limited assistance in this regard.

Fully Enclosed Holes

a) Arguments of the parties

70. The Appellants submit that the Contested Design Concept contravenes Art. 3.12.5 TR because the space that exists between the surfaces of the different transitions constitutes a “hole” and, under the second sentence of Art. 3.12.5 TR, holes are permitted as exceptions only if they meet two conditions: (i) that they are “fully enclosed” and (ii) that they appear on the surfaces of either the step or reference planes.
71. The Contested Design Teams and the FIA submit that, while there may be spaces between different surfaces, the surfaces themselves do not have holes in them. They contend that the spaces between different surfaces are not holes within the very specific meaning of Art. 3.12.5 TR, and that their arguments do not rely on the exception contained therein.

b) Findings of the Court

72. The Court confirms that “fully enclosed holes” are permitted only on the step plane or reference plane under Art 3.12.5 TR. Holes in the transitions are not addressed by this article of the TR. In any event, the Court finds that the spaces arising between the separate surfaces of different transitions are not “holes” in those surfaces (fully enclosed or otherwise) within the specific meaning of Art. 3.12.5 TR. Therefore, the Court considers that the compliance or otherwise of the Contested Design Concept does not turn on the exception contained in the second paragraph of Art. 3.12.5 TR.

The contested diffuser is in excess of 175mm in height above the reference plane and begins to direct air from a point forward of the rear wheel centre line in breach of Article 3.12.7 TR

a) Arguments of the parties

73. The Appellants submit that the Contested Design Concept breaches Art. 3.12.7 TR because it is in excess of 175mm in height above the reference plane. The Appellants further submit that the Contested Design Concept contravenes Art. 3.12.7 TR as it directs air upwards at a point which is forward of the rear wheel centre line.
74. The Contested Design Teams point out that Art. 3.12.7 TR states that:

No bodywork which is visible from beneath the car and which lies between the rear wheel centre line and a point 350mm rearward of it may be more than 175mm above the reference plane.

They argue that Art. 3.12.7 TR does not constrain the design of bodywork unless it is visible from directly beneath the car. They submit that, regardless of whether their Contested Design Concept might be in excess of 175mm in height

above the reference plane, it is not visible from beneath and therefore not constrained by this measurement.

75. Further they argue that there is no regulation which prohibits their diffusers from beginning to direct air upwards at a point which is forward of the rear wheel centre line.

b) Findings of the court

76. The Court finds that Art. 3.12.7 TR clearly applies only to “bodywork which is visible from beneath the car”. Parts which are not visible from directly beneath are not required to comply with the measurements in Art. 3.12.7 TR. In this case, no party submitted proof that any part of the Contested Design Concept which is visible from below lies more than 175mm above the reference plane.

77. The Court confirms that Art. 3.12.7 TR does not explicitly prohibit diffusers from beginning to direct air upwards at a point which is forward of the rear wheel centre line.

78. For all of the foregoing reasons, the Court denies the Fourth Plea.

Fifth Plea - Infinite Precision Has Been Used to Circumvent the Intention of the TR

a) Arguments of the parties

79. Red Bull submits that at least one Respondent, Brawn GP, relied on “infinite precision” in contravention of the second sentence of Article 3 TR, which states that:

[...] infinite precision can be assumed on certain dimensions provided it is clear that such an assumption is not being made in order to circumvent the intention of the relevant regulation.

80. The FIA submitted that its Technical Department, following careful examination of all cars, concluded that none of the contested cars make use of infinite precision to comply with the TR.

b) Findings of the court

81. As no party has submitted proof that infinite precision was relied upon and, to the contrary, the Court has heard submissions from the FIA stating that infinite precision was not relied upon, the Court denies the Fifth Plea.

Sixth Plea – The Decision of the Stewards is Inconsistent with Previous Statements Rendered by the FIA

a) Arguments of the parties

82. Renault alleges that the FIA has previously rendered opinions to it, stating that designs similar to those used by the Contested Design Teams in the Contested Design Concept were contrary to the TR.
83. Red Bull submits that it asked the FIA in January 2007 to clarify its position as regards any discontinuity in the reference plane, and the response from the FIA clearly stated that such a discontinuity would be illegal.
84. The FIA argues that in no previous statement did it deal with the Contested Design Concept. The questions put to it in previous cases were different and answered correctly and in a manner consistent with its present position.

b) Findings of the Court

85. The Court observes that opinions of the Technical Department, while performing a vital role, are advisory in nature and are not Technical Regulations. Teams are obliged to comply with the TR as written. It is for the Stewards, and ultimately this Court, to offer binding interpretations of the TR. Even if the Contested Decisions were inconsistent with any opinion of the FIA Technical Department (which has not been established), this would not give rise to the invalidity of the Contested Decisions. The Court therefore denies the Sixth Plea.

Seventh Plea – Denying the Appeals Will Contravene the FIA's Stated Objectives of Reducing the Costs of Formula One and Making it More Viable in the Long Term

a) Arguments of the parties

86. The Appellants submit a series of arguments in which they claim that disallowing the Appeals will add considerably to the required budgets of the teams at a time when efforts are being made to reduce the costs in Formula One.
87. The Appellants submit that if the Court declares the Contested Design Concept to be legal then the teams without such a design will have little choice other than to develop it, since the Contested Design Concept potentially results in notable performance gains. The Appellants argue that this means that the costs of competing will increase substantially.

88. The Contested Design Teams argue that any such cost is not relevant to the question of whether the Contested Design Concept complies with the TR.

b) Findings of the Court

89. The Court finds that it is for the FIA to determine how best to achieve its objectives, including any objective to reduce the cost of participation in Formula One by adopting regulations to achieve such aims. However, the possibility of teams not presently using the Contested Design Concept incurring future development costs is not a factor relevant to the legal assessment of whether the Contested Decisions comply with the TR or not. The Court therefore denies the Seventh Plea.

On those grounds,

THE FIA INTERNATIONAL COURT OF APPEAL

Hereby:

- 1. Finds the Appeals to be admissible;**
- 2. Rejects the Appeals against Decisions No. 16, 17, 18, 19, 20, 21, 22, 23, and 24 taken by the Panel of Stewards on 26 March 2009 at the 2009 Grand Prix of Australia;**
- 3. Orders the Appellants to pay the costs of the present Appeals, in accordance with Article 24 of the Rules of the International Court of Appeal.**

Paris, 14 April 2009

The President