

Appeal brought on 17 December 2021 by the European Union Intellectual Property Office against the judgment of the General Court (Third Chamber) delivered on 6 October 2021 in Case T-342/20, Indo European Foods v EUIPO

(Case C-801/21 P)

(2022/C 207/14)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (represented by: D. Hanf, V. Ruzek, D. Gaja, E. Markakis, Agents)

Other parties to the proceedings: Indo European Foods Ltd, Hamid Ahmad Chakari

Form of order sought

The Appellant claims that the Court should:

- set aside in whole the judgment under appeal in Case T-342/20;
- declare that there is no need to adjudicate on the action brought before the General Court against the decision of the Fourth Board of Appeal of EUIPO of 2 April 2020 (Case R 1079-4), and
- order the Applicant at first instance to pay the costs incurred by EUIPO relating to the present appeal and to the proceedings before the General Court.

Pleas in law and main arguments

In support of its appeal, the Appellant EUIPO puts forward a single plea in law, namely infringement of the requirement of a continuing interest in bringing proceedings as recognized by settled case law, which raises an issue that is significant with respect to the unity, consistency and development of Union law.

- First error of law, alleging that the General Court infringed the fundamental and autonomous prerequisite for any legal proceedings — as recognized by settled case law — of a continuing interest in bringing proceedings, refusing to consider matters which came into existence after the contested decision on the mere fact that such matters could not call into question the legality of the contested decision. Such interpretation not only conflates this preliminary procedural requirement and the subsequent review of the legality on the merits. It also deprives the continuing interest in bringing proceedings of its own and independent function.
- Second error of law, alleging that, consequently, the General Court failed to assess the Applicant at first instance's continuing interest in bringing proceedings. By focusing on the review of legality, the General Court left the question of this mandatory preliminary requirement unanswered: what advantages could the Applicant at first instance derive from the annulment of the contested decision?
- Third error of law, alleging that the General Court failed to conclude that the Applicant at first instance had not complied with its duty to show its continued interest in bringing proceedings as from the end of the transition period. Given that the mark applied for would be registered only after the end of the transition period, that is, at a point in time when the marks in conflict will not fulfil (and never have fulfilled) their essential function simultaneously⁽¹⁾, EUIPO argues that no conflict *ratione temporis* and *ratione loci* could possibly arise. It follows that the Applicant at first instance could not derive any advantage from the procedure and, therefore, does not show a continuing interest in bringing proceedings.
- Fourth error of law, alleging that the General Court, in consequence of those errors, breached Article 50(3) TEU, Articles 126 and 127 Withdrawal Agreement⁽²⁾ and Article 72(6) Regulation 2017/1001, which are expressions of the fundamental principle of territoriality, imposing upon EUIPO an obligation to disregard the legal consequences of the end of the transition period on the present case.

- The present appeal raises an issue that is significant with respect to the unity, consistency and development of Union law. The judgment under appeal endorses a narrow interpretation of the scope of the horizontal requirement of a continuing interest in bringing proceedings. The said requirement is inspired by the general theory of procedural law common to the Member States, and the interpretation provided by the Union Judge is likely to significantly influence the way it is applied by national courts. The present appeal also raises an important issue of procedural nature — by no means limited to the realm of IP law —, namely the consequences to be drawn from the rule that the author of the annulled act must have reference to the date on which it had adopted it with a view to adopting the replacement act. The issue of the disappearance of the earlier right *pendente lite* has given rise to contradictory judgments of the General Court, yet the Court of Justice only had a brief opportunity, by way of reasoned order, to address in passing this issue. The present appeal also raises the general issue of the consequences, upon the EU legal order, of the UK's effective withdrawal from the EU.

(¹) Article 11, 51(1), 66(1) and 71(3) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017, L 154, p. 1).

(²) Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2019, C 384 I, p. 1).

Appeal brought on 10 January 2022 by Sanford LP against the judgment of the General Court (Fifth Chamber) delivered on 10 November 2021 in Case T-443/20, Sanford v EUIPO — Avery Zweckform (Labels)

(Case C-19/22 P)

(2022/C 207/15)

Language of the case: English

Parties

Appellant: Sanford LP (represented by: J. Zecher, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Avery Zweckform GmbH

By order of 6 April 2022, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Sanford LP should bear its own costs.

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 28 January 2022 — YQ v Ředitelství silnic a dálnic ČR

(Case C-57/22)

(2022/C 207/16)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: YQ

Defendant: Ředitelství silnic a dálnic ČR