

### 3. Third plea in law, alleging infringement of the right to property

The measures introduced by the regulation are not proportionate in so far as the mandatory cap on market revenues imposed on renewable energy producers, as provided for in the regulation, and the powers given to each Member State to seize (nationalise) for the benefit of the State the 'surplus revenues' of those producers infringe the fundamental right to property. The application of Article 122(1) of the Treaty on the Functioning of the European Union (TFEU) constitutes one of the aspects of the Community's public interest. Consequently, pursuant to that article, the exercise of the right to property may be restricted, provided that the cap on market revenues, imposed on renewable energy producers, and seizure for the benefit of the State of 'surplus revenues', introduced by Council Regulation (EU) 2022/1854, are not disproportionate and do not impair the very substance of that right.

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## Action brought on 12 December 2022 — Penguin Random House v EUIPO — Ediciones Literarias Independientes (PLAN B)

(Case T-777/22)

(2023/C 71/44)

*Language in which the application was lodged: Spanish*

### Parties

*Applicant:* Penguin Random House Grupo Editorial, SAU (Barcelona, Spain) (represented by: E. Armijo Chávarri, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Ediciones Literarias Independientes, SL (Barcelona)

### Details of the proceedings before EUIPO

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* figurative mark PLAN B — EU trade mark No 17 887 136

*Proceedings before EUIPO:* Cancellation proceedings

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 28 September 2022 in Case R 2015/2021-1

### Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- in the alternative, annul the contested decision in respect of the goods in Classes 9 and 16 not covered by the Spanish mark PLAN B (mixed) No. 3 641 418 and covered by the contested EU mark;
- order EUIPO to pay the costs.

### Plea in law

Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the Parliament and of the Council.

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