

2. The judgment under appeal is contrary to Article 72(3) of Regulation 2017/1001 since the General Court itself carried out the substantive review of Article 7(1)(a) in conjunction with Article 4 of Regulation 207/2009. The General Court does not have jurisdiction *ratione materiae* for that review because the Board of Appeal made no decision on the applicability of Article 7(1)(a) in conjunction with Article 4 of Regulation 207/2009 the substance of which was amenable to review as to its legality. Thus the substantive review carried out by the General Court constitutes an unlawful alteration of the contested decision. The General Court effectively exercised the original competence of the Board of Appeal in that regard (Articles 165(1), 66(1), 70(1) of Regulation 2017/1001) and thereby definitively and unlawfully deprived the Board of Appeal of that competence.
3. The ‘infringement of the scope of Article 7(1)(b) of Regulation 207/2009’ examined by the General Court of its own motion contrary to the pleas in law raised by the applicant at first instance constitutes an impermissible circumvention of the rule of jurisdiction laid down by the EU legislature in Article 72 of Regulation 2017/1001. It follows that the judgment under appeal is unlawful in its entirety, since it is based entirely on that infringement.
4. The infringement by the judgment under appeal of Article 72(3) of Regulation 2017/1001 necessarily entails further infringements to the detriment of the appellant, namely that (i) the Board of Appeal was definitively deprived of its original (Articles 165(1), 66(1) and 70(1) of Regulation 2017/1001) and specific (Article 71(1), second sentence, first alternative of Regulation 2017/1001) competence to examine and decide the appeal; and (ii) the independence of its members in the exercise of that competence has been undermined (Article 166(7) of Regulation 2017/1001). Furthermore, those infringements unlawfully limit the applicant’s multi-level and specific legal protection at first instance against the decision of the EUIPO examiner and against the decision of the Board of Appeal, as provided for by the EU legislature (Article 66(1), Article 165(1) and recital 30 of Regulation 2017/1001; Article 72 of Regulation 2017/1001).
5. The appeal raises an ‘issue that is significant with respect to the unity, consistency or development of Union law’ within the meaning of the third paragraph of Article 58a of the Statute of the Court of Justice, since the judgment under appeal threatens to create legal uncertainty in relation to an issue that is of particular structural significance for the specific system and ‘logic of the institutional architecture’ provided for by the EU legislature in order to ensure comprehensive, proper, effective and multi-level legal protection against EUIPO decisions. Due to its horizontal and constitutional nature, that issue is of significance for the judicial review of all decisions of the EUIPO Boards of Appeal in trade mark and design matters. It also concerns legal protection against decisions of all EU agencies, for which the EU legislature has made a specific, comprehensive and prior review by an independent Board of Appeal mandatory as a ‘specific condition’ within the meaning of the fifth paragraph of Article 263 TFEU.

(¹) 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) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

**Request for a preliminary ruling from the Court of Cassation (France) lodged on 7 April 2023 —
Mutuelle assurance des travailleurs mutualistes (Matmut) v TN and Others**

(Case C-236/23, Matmut)

(2023/C 296/17)

Language of the case: French

Referring court

Court of Cassation

Parties to the main proceedings

Applicant: Mutuelle assurance des travailleurs mutualistes (Matmut)

Defendants: TN, Société MAAF assurances, Fonds de garantie des assurances obligatoires de dommages (FGAO), PQ

Question referred

Must Articles 3 and 13 of Directive 2009/103 of the European Parliament and of the Council of 16 September 2009 ⁽¹⁾ be interpreted as precluding the nullity of a contract for civil liability motor insurance from being declared enforceable against a passenger who is a victim where that person is also the policyholder and intentionally made a false statement at the time of conclusion of the contract which gave rise to that nullity?

⁽¹⁾ Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).

Request for a preliminary ruling from the Landgericht Duisburg (Germany) lodged on 19 April 2023 — OB v Mercedes-Benz Group AG

(Case C-251/23, Mercedes-Benz Group)

(2023/C 296/18)

Language of the case: German

Referring court

Landgericht Duisburg

Parties to the main proceedings

Applicant: OB

Defendant: Mercedes-Benz Group AG

Questions referred

1. Is a diesel-powered passenger vehicle to which the Euro 5 emissions standard applies contrary to the rules of European law, irrespective of whether a switching device that is to be classified conceptually as a defeat device within the meaning of Article 3(10) of Regulation No 715/2007 ⁽¹⁾ is installed in its control system, if it is clear from the outset, on the basis of its design and the control system for the installed functions, that after the engine has warmed up it emits more than 180 mg of nitrogen oxide per km in the 'mix' even if it completes a NEDC test run in that state?
2. Can an element of design in a vehicle which senses temperature, vehicle speed, engine speed (RPM), transmission gear, manifold vacuum or any other parameter for the purpose of modulating the parameters of the combustion process in the engine depending on the results of the sensing operation reduce the effectiveness of the emission control system within the meaning of Article 3(10) of Regulation No 715/2007 and therefore constitute a defeat device within the meaning of Article 3(10) of Regulation No 715/2007 even where the modulation of the parameters of the combustion process effected by the element of design based on the results of the sensing operation increases emissions of a certain harmful substance, such as nitrogen oxide, while at the same time reducing emissions of one or more other harmful substances, such as particulates, hydrocarbons, carbon monoxide and/or carbon dioxide?
3. If Question 2 is to be answered in the affirmative: Under what conditions does the element of design in such a case constitute a defeat device within the meaning of Article 3(10) of Regulation No 715/2007?