

**Appeal brought on 28 November 2011 by TofuTown.com GmbH against the judgment of the General Court (Second Chamber) delivered on 20 September 2011 in Case T-99/10 Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case C-599/11 P)

(2012/C 133/25)

*Language of the case: German*

#### Parties

*Appellant:* TofuTown.com GmbH (represented by: B. Krause, Rechtsanwältin)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG

#### Form of order sought

- Set aside the judgment under appeal;
- order Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG to pay the costs of the proceedings at first instance and of this appeal, or, on the contested basis that the appeal is dismissed, order that such costs be shared.

#### Pleas in law and main arguments

The present appeal has been brought against the judgment of the General Court by which that Court annulled the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 January 2010 relating to opposition proceedings between Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG and TofuTown.com GmbH.

In the appellant's view the judgment under appeal should be set aside on the following grounds.

First, the General Court erred in law in determining, under new criteria, that there was a likelihood of confusion in the light of Article 8(1)(b) of Regulation No 207/2009. According to the judgment under appeal, it is sufficient, in order for the existence of a conceptual similarity to be established, that both terms are taken from a common overarching term, and that, although conceptually different, they do not contrast with each other, which is inconsistent with existing case-law.

Second, the General Court erred in law in determining that there was a likelihood of confusion without taking all the relevant and accepted criteria for the assessment of the similarity of trade marks into account. In the present case, the only common element is at the end of the mark cited in opposition. According to settled case-law, consumers generally pay more attention to the beginning of a trade mark than to the end.

**Appeal brought on 30 November 2011 by ara AG against the judgment of the General Court (Seventh Chamber) delivered on 22 September 2011 in Case T-174/10 ara v OHIM**

(Case C-611/11 P)

(2012/C 133/26)

*Language of the case: French*

#### Parties

*Appellant:* ara AG (represented by: M. Gail, Rechtsanwalt)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Allrounder SARL

#### Form of order sought

- Set aside the judgment of the General Court of the European Union of 22 September 2011 in Case T-174/10;
- annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 January 2010 (Case R 481/2009-1);
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and the intervener at first instance to pay the entirety of the costs in the two instances.

#### Pleas in law and main arguments

The appellant alleges infringement by the General Court of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark. <sup>(1)</sup>

In that connection, the appellant alleges, first, breach of the obligation to state reasons by the General Court in that it failed, in the global assessment of the likelihood of confusion, to provide sufficient reasons with regard to the criteria of the relevant public, the comparison of the marks and the likelihood of confusion. Thus, the General Court erred in finding that the public in question consists of average consumers displaying an average level of attention when the goods concerned are purchased despite the fact that it had been established, initially, that the consumer will rarely have the chance to make a direct comparison between the different marks. Furthermore, the General Court erred in finding, when comparing the marks, that the presence of the two triangular motifs dominated the

impression conveyed to the public by the mark in dispute. Consequently, the General Court overstated one or more components of the mark.

In addition, the appellant submits that the General Court breached the obligation to state reasons to the extent that it did not refer to the documents submitted by the intervener in connection with ascertaining whether there was a likelihood of confusion.

Lastly, the appellant submits that the General Court underestimated the importance of the principle that the competent authority has a duty to examine relevant facts of its own motion.

<sup>(1)</sup> OJ 2009 L 78, p. 1.

**Appeal brought on 6 December 2011 by Brighton Collectibles, Inc. against the judgment of the General Court (Second Chamber) delivered on 27 September 2011 in Case T-403/10 Brighton Collectibles v OHIM — Felmar**

(Case C-624/11 P)

(2012/C 133/27)

*Language of the case: French*

#### Parties

*Appellant:* Brighton Collectibles, Inc. (represented by: J. Horn, avocat)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Felmar

#### Form of order sought

- Set aside the judgment of the General Court in Case T-403/10;
- Order OHIM to bear its own costs and those of the appellant;
- Order Felmar to bear its own costs if it intervenes in the proceedings.

#### Pleas in law and main arguments

By the present appeal, the appellant claims that the General Court failed to make a valid assessment of the evidence the appellant submitted to it and failed to give sufficient reasons for its decision with regard to the national laws relied upon, in particular, Irish and UK case-law relating to passing off. Consequently, the General Court infringed the provisions of Article 8(4) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark. <sup>(1)</sup>

<sup>(1)</sup> OJ 2009 L 78, p. 1.

**Reference for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court) Leipzig (Germany) lodged on 13 February 2012 — Gemeinde Altrip (Municipality of Altrip), Gebrüder Hört GbR, Willi Schneider v Rhineland-Palatinate**

(Case C-72/12)

(2012/C 133/28)

*Language of the case: German*

#### Referring court

Bundesverwaltungsgericht (Federal Administrative Court) Leipzig

#### Parties to the main proceedings

*Applicants:* Gemeinde Altrip (Municipality of Altrip), Gebrüder Hört GbR, Willi Schneider

*Defendant:* Rhineland-Palatinate

#### Questions referred

1. Is Article 6(1) of Directive 2003/35/EC <sup>(1)</sup> of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC <sup>(2)</sup> and 96/61/EC to be interpreted as meaning that Member States were required to declare the rules of national law adopted to implement Article 10a of Directive 85/337/EEC applicable also to those official permit procedures which had been initiated before 25 June 2005 but in which the permits were not issued until after that date?
2. If Question 1 is answered in the affirmative:

Is Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, to be interpreted as meaning that Member States were required to extend the applicability of the rules of national law adopted in implementation of Article 10a of Directive 85/337/EEC for the purpose of challenging the procedural legality of a decision to include cases in which an environmental impact assessment was carried out but was incorrect?

3. If Question 2 is answered in the affirmative:

In cases in which, in accordance with Article 10a(1)(b) of Directive 85/337/EEC, the administrative procedural law of a Member State lays down in principle that access to a judicial review procedure for members of the public concerned is conditional upon maintaining the impairment of a right, is Article 10a of Directive 85/337/EEC to be interpreted as meaning