

— Order the other parties to the proceedings to pay the costs.

Pleas in law and main arguments

1. It is disputed that there is graphic similarity between Community trade mark No 6314462 'AMICI JUNIOR' and Italian national figurative mark Nos 912114 'AJ ARMANI JEANS' and 998554 'ARMANI JUNIOR', or any aural similarity.
2. Article 8(5) of Regulation No 207/2009 and the principle that marks must be well known were applied in the judgment under appeal, even though Girogio Armani S.p.A. did not make any express reference to or rely on that provision or principle.

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

Appeal brought on 1 June 2012 by Telefónica SA against the order of the General Court (Eighth Chamber) delivered on 21 March 2012 in Case T-228/10 Telefónica v Commission

(Case C-274/12 P)

(2012/C 227/21)

Language of the case: Spanish

Parties

Appellant: Telefónica SA (represented by: J. Ruiz Calzado, abogado, M. Núñez-Müller, Rechtsanwalt, and J. Domínguez Pérez, abogado)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

- set aside the order under appeal;
- declare the action for annulment in Case T-228/10 admissible and refer the case back to the General Court for it to give judgment on the substance of the dispute;
- order the Commission to pay all the costs of the proceedings at both instances relating to admissibility.

Grounds of appeal and main arguments

1. The General Court erred in law in adopting a decision which infringes the right to an effective remedy. In considering, in a general manner, that the option of a reference for a preliminary ruling is always adequate and possible, the

General Court infringed the appellant's right at first instance to an effective remedy, such as laid down in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and which is recognised expressly in Article 47 of the Charter of Fundamental Rights of the European Union.

2. The General Court erred in law by wrongly interpreting the case-law on the admissibility of actions against decisions on State aid declaring an aid scheme unlawful and incompatible.
3. The General Court erred in law in interpreting the fourth paragraph of Article 263 TFEU, *in fine*. The General Court erred in law in stating that decisions regarding State aid schemes, such as the contested decision, entail implementing measures within the meaning of the new Treaty provision (the fourth paragraph of Article 263 TFEU). In its order, the General Court failed to recognise that a negative decision regarding State aid has direct effect, immediately renders the aid granted unlawful, and normally implies an obligation on the part of the Member States to recover such aid.

Action brought on 8 June 2012 — European Commission v Hungary

(Case C-288/12)

(2012/C 227/22)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: B. Martenczuk and B.D. Simon, acting as Agent(s))

Defendant(s): Hungary

Form of order sought

- Declare that Hungary has failed to fulfil its obligations under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data by removing the data protection supervisor from office before time.
- Order Hungary to pay the costs.

Pleas in law and main arguments

Directive 95/46/EC provides that one or more public authorities of the Member States, which are to act with complete independence in exercising the functions entrusted to them, are to be responsible for monitoring the application of the national provisions transposing that Directive.