

Parties to the main proceedings

Appellant: Loterie Nationale — Nationale Loterij NV

Respondents: Paul Adriaensen, Werner De Kesel, The Right Frequency VZW

Question referred

Does the application of paragraph 14 of Annex I to Directive 2005/29/EC⁽¹⁾ of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council require that a prohibited pyramid promotional scheme exists only if the realisation of the financial promise to existing members:

— depends primarily or mostly on the direct transfer of the contributions of the new members ('direct link'),

or

— does it suffice that the realisation of the financial promise to existing members depends primarily or mostly on an indirect payment through the contributions of existing members, i.e. existing members do not obtain their compensation primarily or mostly from their own sale or their own consumption of goods or services, but depend for the realisation of the financial promise primarily or mostly on the subscription and contributions of new members ('indirect link')?

⁽¹⁾ OJ 2005 L 149, p. 22.

Appeal brought on 15 December 2015 by The Tea Board against the judgment of the General Court (Eighth Chamber) delivered on 2 October 2015 in Case T-624/13: The Tea Board v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-673/15 P)

(2016/C 106/15)

Language of the case: English

Parties

Appellant: The Tea Board (represented by: M.C. Maier, A. Nordemann, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Delta Lingerie

Form of order sought

The appellant claims that the Court should:

— annul the contested judgment of the General Court of 2 October 2015 in Case T-624/13 as far as the General Court dismissed the action with respect to the following services covered by the mark applied for in Classes 35 and 38:

Business consultancy with regard to the creation and operation of retail outlets and central purchasing agencies for retailing and advertising purposes; Sales promotion (for others), advertising, business management, business administration, on-line advertising on a computer network, distribution of advertising material (leaflets, flyers, free newspapers, samples), arranging newspaper subscriptions for others; Business information or enquiries; organization of events and exhibitions for commercial or advertising purposes, advertising management, rental of advertising space, radio and television advertising, advertising sponsorship. (Class 35)

Telecommunications, computer-aided transmission of messages and images, interactive television broadcasting services relating to the presentation of products, communications by computer terminals, communications (transmissions) on the open and closed world wide web. (Class 38)

- if necessary, remit the case back to the General Court,

- order the Defendant to bear the costs of the proceedings.

Pleas in law and main arguments

1. The Action seeks the partial annulment of the judgment of the General Court in Case T-624/13 of 2 October 2015 in so far as the General Court dismissed the action with respect to services covered by the contested mark in Classes 35 and 38.

2. The Action is based on two pleas in law: infringement of Article 8(1)(b) CTMR ⁽¹⁾ and infringement of Article 8(5) CTMR.

3. The Applicant is of the opinion that the essential function of a Community collective mark according to Article 66(2) CTMR, consisting of an indication which serves to designate the geographical origin of the goods covered, is not to serve as an indication of commercial origin but only to guarantee the collective origin of the goods or services offered and sold under the mark, i.e. that the products come from an undertaking which is located in the geographical region adopted as a Community collective mark and which is entitled to use the Community collective mark.

4. Consequently, in the Applicant's view it must be concluded that, in the framework of Article 8(1)(b) CTMR, the geographical origin must be taken into account as a relevant factor- either when assessing the similarity of the goods and/or services at issue and/or when carrying out a global assessment of likelihood of confusion.

5. Therefore, when comparing goods and/or services of an earlier Community collective mark according to Article 66(2) CTMR, consisting of geographical indication, with those of a Community individual mark, it is not, in the Applicant's opinion, decisive whether the goods and services in question are similar in regard to their nature, purpose, end users and/or distribution channels. Rather, it must be questioned whether the goods and/or services in question may have the same geographical origin.

6. The Applicant's interpretation of Article 66(2) CTMR results from
 - 1) the inner logic of Regulation No. 207/2009, in particular the fact that
 - i. Article 66(2) CTMR constitutes an exception within Regulation No. 207/2009 as, according to Article 7(1)(c) CTMR, trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the geographical origin of the goods or of rendering of the service shall not be registered,

 - ii. according to Article 67(2) CTMR, the regulations governing use of a Community collective trade mark consisting of geographical indication must authorise *any* person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark, and consequently, a Community collective mark consisting of geographical indication is *never* capable of distinguishing goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

 - 2) an interpretation of that provision in the light of Regulation No. 1151/2012 ⁽²⁾ and in the light of the TRIPs-Agreement, according to which geographical indications should enjoy a high level of protection, and according to which presentations of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the *geographical origin* of the good, should be prohibited.

7. The Applicant is of the opinion that the qualities established by the General Court in connection with DARJEELING can also be transferred to services such as business consultancy or telecommunication services, and are able to strengthen the power of attraction of the contested mark in that regard. Further, the Applicant points out that the General Court did not provide any substantiated grounds in its judgment, as to why the qualities associated with the mark DARJEELING could not be transferred to services in Class 35 and 38, which, in itself is an error in law.

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

⁽²⁾ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
OJ L 343, p. 1

**Appeal brought on 15 December 2015 by The Tea Board against the judgment of the General Court
(Eighth Chamber) delivered on 2 October 2015 in Case T-625/13: The Tea Board v Office for
Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case C-674/15 P)

(2016/C 106/16)

Language of the case: English

Parties

Appellant: The Tea Board (represented by: M.C. Maier, A. Nordemann, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Delta Lingerie

Form of order sought

The appellant claims that the Court should:

- annul the contested judgment of the General Court of 2 October 2015 in Case T-625/13 as far as the General Court dismissed the action with respect to the following services covered by the mark applied for in Classes 35 and 38:

Business consultancy with regard to the creation and operation of retail outlets and central purchasing agencies for retailing and advertising purposes; Sales promotion (for others), advertising, business management, business administration, on-line advertising on a computer network, distribution of advertising material (leaflets, flyers, free newspapers, samples), arranging newspaper subscriptions for others; Business information or enquiries; organization of events and exhibitions for commercial or advertising purposes, advertising management, rental of advertising space, radio and television advertising, advertising sponsorship. (Class 35)

Telecommunications, computer-aided transmission of messages and images, interactive television broadcasting services relating to the presentation of products, communications by computer terminals, communications (transmissions) on the open and closed world wide web. (Class 38)

- if necessary, remit the case back to the General Court,
- order the Defendant to bear the costs of the proceedings.

Pleas in law and main arguments

1. The Action seeks the partial annulment of the judgment of the General Court in Case T-625/13 of 2 October 2015 in so far as the General Court dismissed the action with respect to services covered by the contested mark in Classes 35 and 38.
2. The Action is based on two pleas in law: infringement of Article 8(1)(b) CTMR ⁽¹⁾ and infringement of Article 8(5) CTMR.