

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- grant the form of order sought at first instance by the present appellants in the action brought in Case T-580/16;
- order the respondent to pay all of the costs.

Grounds of appeal and main arguments

The appellants are of the opinion that the judgment under appeal is vitiated by several errors of law and a distortion of the facts.

The General Court erred in law and distorted the facts by rejecting an autonomous and uniform interpretation of the concept of education costs within the EU legal order and by making that concept dependent on the meaning attributed to it in the various education systems of the countries of residence of an official, irrespective of the nature of the costs and the interests of the children.

According to the case-law of the Court of Justice, it follows, both from the uniform application of EU law and from the principle of equality, that the terms of a provision of EU law that makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of the provision and the objective pursued by the legislation in question (judgment of 15 October 2015, *Axa Belgium*, C-494/14, EU:C:2015:692).

In addition, the General Court's finding in paragraph 47 of the judgment under appeal is incoherent and misconstrues the case-law concerning the rule of correspondence between the prior administrative complaint and the action.

The appellants also submit that the General Court did not comply with its obligation to state reasons by failing to rule on the infringement of the principle of equal treatment and of Article 22 of the Charter of Fundamental Rights of the European Union, which had nonetheless been put forward before it.

Consequently, according to the appellants, by examining their three separate heads of claims in a manner that was overly perfunctory, the General Court arrived at findings that are substantiated neither in law nor in fact.

**Appeal brought on 17 July 2017 by Enercon GmbH against the judgment of the General Court
(Eighth Chamber) delivered on 3 May 2017 in Case T-36/16: *Enercon v EUIPO***

(Case C-433/17 P)

(2017/C 412/21)

Language of the case: English

Parties

Appellant: Enercon GmbH (represented by: R. Böhm, Rechtsanwalt, M. Silverleaf QC)

Other parties to the proceedings: European Union Intellectual Property Office, Gamesa Eólica, SL

Form of order sought

The appellant claims that the Court should:

- annul the judgment of the General Court in case T-36/16;
- annul the judgment of the General Court in case T-245/12;
- remit the case to the EUIPO with a direction to adopt the decision of the First Board of Appeal in Case R 260/2011-1 and reject Gamesa's application for cancellation of the registration in suit;
- award the costs of the proceedings against the respondent at first instance.

Pleas in law and main arguments

The appellant submits that the judgment under appeal in Case T-36/16 infringes Article 7(1)(b) and/or 52(1)(a) of Council regulation (EC) No 207/2009 ⁽¹⁾ and that there was a breach of procedure before the General Court on the following grounds:

1. The General Court wrongly held that the registration of the mark in suit lacks the requisite inherent distinctive character to entitle it to registration contrary to Article 7(1)(b) of regulation 207/2009. In so doing the General Court erred in law.
2. The first error of law was to treat the designation of the mark as a colour mark on the application form as determining the nature of the mark in law and consequently affecting the assessment of its inherent distinctive character. The court ought to have held that the designation of the mark as a colour mark on the application form is one made principally for the administrative convenience of the EUIPO and not a matter of law. Consequently it ought to have had regard not only to the designation of the mark on the form but to the whole content of the application form, in particular the representation of the mark filed with the application form, in determining the nature of mark sought to be registered. The representation of the mark on the application shows a figurative mark having the particular characteristics shown therein.
3. The General Court ought also to have had regard to the form of the mark as registered, and in particular as denoted in the registration certificate issued by the EUIPO on registration of the mark. The registration certificate is the document of record which denotes the form of the mark as registered and should have been treated by the court as determinative in establishing the nature of the registered mark. The content of the registration certificate, properly understood, makes clear that the mark is registered as a figurative mark taking the form appearing in the representation filed with the application form. In failing to do so, the court erred in law.
4. The second error of law and breach of procedure was to refuse to receive information necessary to understand the content of the registration certificate for the mark in suit. That document is publication ST.60 of the World Intellectual Property Office which sets out the meaning of the INID codes used universally in registration certificates issued by intellectual property offices including the EUIPO to identify the nature and meaning of the entries therein. The meaning of the INID codes can only be determined by reference to publication ST.60 or an equivalent reference source and the content of registration certificates can only be determined by reference to the meaning of the INID codes therein. The court wrongly treated the source of such information as evidence and consequently wrongly refused to receive the document or the information it contains when it is in fact a legal text equivalent to a dictionary. Had the court had regard to the interpretive tools presented to it, it would have appreciated that the registration certificate is for a figurative mark comprising the representation shown in the application form for registration. Such a mark had previously been correctly held by the First Board of Appeal of the EUIPO to have the requisite distinctive character to entitle it to registration and the General Court should accordingly have so determined.

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

**Request for a preliminary ruling from the Sąd Rejonowy Poznań-Stare Miasto w Poznaniu (Poland)
lodged on 22 August 2017 — HR**

(Case C-512/17)

(2017/C 412/22)

Language of the case: Polish

Referring court

Sąd Rejonowy Poznań-Stare Miasto w Poznaniu

Parties to the main proceedings

Applicant: HR