(b) Is an official body justified in withholding the requested information if the provision of that information requires the data which it holds to be processed and catalogued by a third party and if doing so would require financial expense in the region of EUR 6 000? In that regard, is it relevant whether the person making the request is prepared to meet the costs incurred?

(1) Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14 (3) of Council Regulation (EC) No 2100/94 on Community plant variety rights (OJ 1995 L 173, p. 14).

Appeal brought on 4 April 2018 by Constantin Film Produktion GmbH against the judgment of the General Court (Sixth Chamber) delivered on 24 January 2018 in Case T-69/17, Constantin Film Produktion GmbH v European Union Intellectual Property Office

(Case C-240/18 P)

(2018/C 249/09)

Language of the case: German

Parties

Appellant: Constantin Film Produktion GmbH (represented by: E. Saarmann and P. Baronikians, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of 24 January 2018 in Case T-69/17;

— order the respondent to pay the costs.

Grounds of appeal and main arguments

In support of its appeal the appellant submits three grounds.

1. **Infringement of Article 7(1)(f) of the EU Trade Mark Regulation (EUTMR)**

The General Court of the European Union erred in refusing the EU trade mark application at issue on the basis of the absolute ground for refusal under Article 7(1)(f) of the EUTMR. (1) The sign applied for is not, it is submitted, contrary to accepted principles of morality.

The General Court of the European Union committed the following errors in its examination of the findings made by the Board of Appeal:

The General Court of the European Union examined the sign 'Fuck you, Goethe', instead of the specific sign applied for, namely 'Fack Ju Göhte'.

The General Court of the European Union erred in assuming that the sign applied for was marked by an inherent vulgarity, thereby overlooking the fact that the multi-word sign 'Fack Ju Göhte' is an original and distinctive artistic term which, on account of its misspelling, appears humorous and harmless.

The General Court of the European Union erred in law by confirming the Board of Appeal's determination of the relevant German-speaking public's perception. The appellant has proved the broad success of the film 'Fack Ju Göhte' in the German-speaking part of the European Union and the fact that the relevant public associates the sign applied for with amusement and entertainment. Even the (few) members of the public who have not yet heard of the film cannot possibly feel offended by the sign applied for in respect of the goods and services covered, as the phonetic spelling of the sign by itself deprives it of any seriousness. Furthermore, the sign applied for does not require any action on behalf of the general public, nor does it directly address or insult it.

2. **Infringement of the principle of equal treatment**

By not applying to the present case the findings of the European Union Intellectual Property Office concerning the application for the sign 'DIE WANDERHURE' (OHIM decision of 28 May 2015 — R 2889/2014-4 *Die Wanderhure*), the General Court of the European Union arbitrarily treated substantially similar situations in different ways.

3. **Infringement of the principles of legal certainty and sound administration**

By examining the sign 'Fuck you, Goethe' instead of 'Fack Ju Göhte' and by not applying the findings of the WANDERHURE decision, the General Court of the European Union took a decision which was unforeseeable and not verifiable.

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

Appeal brought on 3 April 2018 by the European Joint Undertaking for ITER and the Development of Fusion Energy against the judgment of the General Court (Fifth Chamber) delivered on 25 January 2018 in Case T-561/16, Galocha v Fusion for Energy Joint Undertaking

(Case C-243/18 P)

(2018/C 249/10)

Language of the case: Spanish

Parties

Appellant: European Joint Undertaking for ITER and the Development of Fusion Energy (represented by: G. Poszler and R. Hanak, acting as Agents)

Other party to the proceedings: Yosu Galocha

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 25 January 2018 in Case T-561/16 by which it annulled the reserve lists for selection procedure F4E/CA/ST/FGIV/2015/001 and the decisions of Fusion for Energy to appoint the successful candidates;

— if the Court of Justice upholds the appeal, order the applicant at first instance to bear the costs incurred at first instance and the costs of the present appeal.