



Reports of Cases

ORDER OF THE GENERAL COURT (Eighth Chamber)

8 February 2018*

(EU trade mark — Procedure — Taxation of costs — Lack of jurisdiction of the General Court — Referral of the action to the Court of Justice)

In Case T-450/09 DEP,

Simba Toys GmbH & Co. KG, established in Fürth (Germany), represented by O. Ruhl, lawyer,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by A. Folliard-Monguiral, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Seven Towns Ltd, established in London (United Kingdom), represented by K. Szamosi and M. Borbás, lawyers,

APPLICATION for taxation of costs, following the judgment of 10 November 2016, *Simba Toys v EUIPO* (C-30/15 P, EU:C:2016:849),

THE GENERAL COURT (Eighth Chamber),

composed of A.M. Collins (Rapporteur), President, M. Kancheva and J. Passer, Judges,

Registrar: E. Coulon,

makes the following

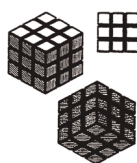
* Language of the case: English.

Order

Facts, procedure and forms of order sought

1 On 1 April 1996, the intervener, Seven Towns Ltd, filed an application for registration of an EU trade mark with the European Union Intellectual Property Office (EUIPO) pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), as amended, itself 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)).

2 Registration as a mark was sought for the three-dimensional sign reproduced below:



3 On 6 April 1999, the mark at issue was registered as an EU trade mark under number 162784. It was renewed on 10 November 2006.

4 On 15 November 2006, the applicant, Simba Toys GmbH & Co. KG, filed a request for a declaration of invalidity of the mark in question pursuant to Article 51(1)(a) of Regulation No 40/94 (which became Article 52(1)(a) of Regulation No 207/2009, now Article 59(1)(a) of Regulation 2017/1001), read in conjunction with Article 7(1)(a) to (c) and (e) of Regulation No 40/94 (which became Article 7(1)(a) to (c) and (e) of Regulation No 207/2009, now Article 7(1)(a) to (c) and (e) of Regulation 2017/2001).

5 By decision of 14 October 2008, the Cancellation Division rejected, in its entirety, the application for a declaration of invalidity.

6 On 23 October 2008, the appellant filed a notice of appeal against that decision with EUIPO, pursuant to Articles 57 to 62 of Regulation No 40/94 (which became Articles 58 to 64 of Regulation No 207/2009, now Articles 66 to 71 of Regulation 2017/1001).

7 By decision of 1 September 2009 ('the contested decision'), the Second Board of Appeal of EUIPO confirmed the decision of the Opposition Division and dismissed the appeal.

8 By application lodged at the Registry of the General Court on 6 November 2009, the applicant brought an action for annulment of the contested decision and an order that EUIPO and the intervener pay the costs relating to the appeal and to the proceedings before the General Court. The case was registered as Case T-450/09 and assigned to the Fourth Chamber.

9 The intervener intervened in the proceedings in support of the form of order sought by EUIPO. The intervener contended, as did EUIPO, that the application should be dismissed and the applicant be ordered to pay the costs.

10 On 10 October 2013, having regard to the changes in the composition of the Chambers of the Court, it was decided to reassign Case T-450/09 to the Sixth Chamber.

- 11 By judgment of 25 November 2014, *Simba Toys v OHIM — Seven Towns (Shape of a cube with surfaces having a grid structure)* (T-450/09, EU:T:2014:983), the Court dismissed the action and ordered the applicant to pay the costs.
- 12 By application lodged at the Registry of the Court of Justice on 26 January 2015, the applicant brought an appeal against that judgment.
- 13 By judgment of 10 November 2016, *Simba Toys v EUIPO (C-30/15 P, EU:C:2016:849)*, the Court of Justice set aside the judgment of 25 November 2014, *Shape of a cube with surfaces having a grid structure* (T-450/09, EU:T:2014:983), itself gave final judgment in the matter by annulling the contested decision and ordered the intervener and EUIPO 'to bear their own costs and to pay the costs of [the applicant] relating both to the proceedings at first instance in Case T-450/09 and to the appeal'.
- 14 By letter of 27 February 2017, the applicant requested EUIPO to reimburse it EUR 53 386.70 as costs that it had incurred in Case T-450/09.
- 15 As no agreement could be reached between the parties on the amount of the recoverable costs, the applicant, by application lodged at the Registry of the General Court on 24 August 2017, submitted the present application for taxation of costs, pursuant to Article 170(1) of the Rules of Procedure of the General Court, registered as T-450/09 DEP, in essence, for the reimbursement by EUIPO and the intervener jointly and severally in the amount of EUR 54 286.70 as costs related to Case T-450/09 and to that application for taxation of costs.
- 16 At the same time, by application lodged at the Registry of the Court of Justice on 24 August 2017, the applicant submitted, pursuant to Article 145 of the Rules of Procedure of the Court of Justice, an application for taxation of costs, registered as C-30/15 P-DEP, for reimbursement of the costs relating to the appeal proceedings in Case C-30/15 P.
- 17 Following a change in the composition of the Chambers of the General Court, the Judge-Rapporteur was assigned, as President, to the Eighth Chamber, to which the present case was, consequently, assigned.

The jurisdiction of the General Court

- 18 According to the second paragraph of Article 54 of the Statute of the Court of Justice of the European Union, where the General Court finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it is to refer that action to the Court of Justice.
- 19 According to Article 127 of the Rules of Procedure of the General Court, decisions referring an action in the circumstances specified in the second paragraph of Article 54 of the Statute of the Court of Justice of the European Union are to be made by the General Court by reasoned order on a proposal from the Judge-Rapporteur.
- 20 It should be noted that, according to Article 133 of the Rules of Procedure of the General Court and to Article 137 of the Rules of Procedure of the Court of Justice, applicable to appeal proceedings by virtue of Article 184(1) of those rules, '[a] decision as to costs shall be given in the judgment or order which closes the proceedings'. Accordingly, under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, the Court of Justice is to make a decision as to costs.

- 21 In the present case, as the judgment of 25 November 2014, *Shape of a cube with surfaces having a grid structure* (T-450/09, EU:T:2014:983), at issue in the appeal proceedings, was set aside and the Court of Justice gave final judgment in the case, it is clear that the judgment of 10 November 2016, *Simba Toys v EUIPO* (C-30/15 P, EU:C:2016:849), closed the proceedings. Furthermore, since the judgment of 25 November 2014, *Shape of a cube with surfaces having a grid structure* (T-450/09, EU:T:2014:983), was set aside in its entirety, there is no longer any decision of the General Court relating to the costs incurred before it in respect of that action.
- 22 In a comparable situation, the Court of Justice has already held that it had jurisdiction to rule on an application for taxation covering the costs of the proceedings followed before the General Court (see, to that effect, order of 1 October 2013, *Elf Aquitaine v Commission*, C-521/09 P-DEP, EU:C:2013:644, paragraphs 9 to 12).
- 23 In those circumstances, the present application for taxation of costs, despite concerning the costs at first instance, falls within the jurisdiction of the Court of Justice.
- 24 Therefore, it must be held that the General Court has no jurisdiction to hear and determine the present application for taxation of costs. Pursuant to the second paragraph of Article 54 of the Statute of the Court of Justice of the European Union and Article 127 of the Rules of Procedure of the General Court, the case is referred to the Court of Justice.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby orders:

Case T-450/09 DEP is referred to the Court of Justice.

Luxembourg, 8 February 2018.

E. Coulon
Registrar

A.M. Collins
President