

Appeal brought on 20 April 2011 by Yorma's AG against the judgment of the General Court (First Chamber) delivered on 15 February 2011 in Case T-213/09, Yorma's AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), other party: Norma Lebensmittelfilialbetrieb GmbH & Co. KG

(Case C-191/11 P)

(2011/C 211/23)

Language of the case: German

Parties

Appellant: Yorma's AG (represented by: A. Weiß, Rechtsanwalt)

Other parties to the proceedings:

— Office for Harmonisation in the Internal Market (Trade Marks and Designs)

— Norma Lebensmittelfilialbetrieb GmbH & Co. KG

Form of order sought

— set aside in its entirety the judgment of the General Court of the European Union of 15 February 2011 in Case T-213/09, pursuant to Article 116(1) of the Rules of Procedure

Pleas in law and main arguments

This appeal is directed against the judgment of the General Court dismissing the appellant's application for annulment of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 20 February 2010 refusing its application for registration of the figurative sign with a word component 'yorma's'. By its judgment the General Court confirmed the Board of Appeal's decision that there was a likelihood of confusion with the earlier Community word mark 'NORMA'.

The ground of appeal is infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ('the Regulation').

The General Court misinterpreted Article 8(1)(b) of the Regulation by reaching the conclusion that there was a certain similarity between the services in question, the accommodation of guests on the one hand and the letting of houses on the other. The Court failed to take into account that those services neither complement each other functionally nor compete with each other and that the relevant classes of consumers are different. The distribution channels are also different.

The General Court further misinterpreted Article 8(1)(b) of the Regulation in such a way that it came to a causally incorrect conclusion by denying that the clearly absent conceptual similarity of the marks was neutralised.

If, like the General Court, one concludes that there is no conceptual similarity, one cannot also conclude that there is similarity as such within the meaning of Article 8(1)(b) of the

Regulation. The conceptual meaning of a word is important because a sign with a definite conceptual meaning is easier to remember than other meaningless signs. There would be a likelihood of confusion only if the later sign made use of the conceptual meaning of the earlier mark. This is clearly not the case here. The likelihood of confusion required by the final words of Article 8(1)(b) of the Regulation was left out of account by the General Court. In particular, the Court took no account of the significance of absence of conceptual similarity, in so far as it took no account of its special significance compared to the absence of phonetic and visual similarity and did not give it the necessary weight, particularly since the apostrophised 's' of the word 'Yorma's' does indeed have an especially emphasised meaning of its own.

Further, the General Court erred in law in the application of Article 8(1)(b) of the Regulation by stating that, against the background of those considerations, the Board of Appeal had correctly taken the view that in the present case the word component dominated. The emphasis in colour of the sign 'Y' on three bars suggesting a line of a musical score does not correspond to that supposition. Moreover, no account whatever was taken of the fact that the colour chosen for the 'Y' is far stronger and more striking than that of the word 'Yorma's'. The General Court's view also fails to address the fact that the single letter 'Y' is in a sort of handwriting, whereas the word component 'Yorma's' is in ordinary print.

The General Court further went wrong and infringed Article 8(1)(b) of the Regulation by assuming that the opposing mark Norma reproduces a visual impression. The opposing mark Norma clearly does not reproduce a visual impression.

Also an error of law and hence an infringement of Article 8(1)(b) of the Regulation is the General Court's view that the overall impression created by the sign applied for could be substantially influenced.

Also an error of law and hence an infringement of Article 8(1) of the Regulation is the General Court's reasoning in which it states that the phonetic difference between the two initial letters 'N' and 'Y' of the words 'Norma' and 'Yorma's' carries less weight than the phonetic coincidence of the letters common to both marks 'O', 'R', 'M' and 'A'. The General Court further says that the 'Y' in the background of the mark applied for is not pronounced; that the apostrophised 's' is also not necessarily pronounced; and that even if it is pronounced, it does not suffice to neutralise the phonetic similarity produced by the common word component 'orma'.

As a result of the different initial letters, each mark has a completely new sound. The 'Y' of 'Yorma's' gives it a softer expression, the 'N' of 'Norma' a harder, monotonous sounding expression. The 'S', which, contrary to the General Court's view, is always pronounced, since it is not presented in a subsidiary manner in its graphic form, gives the mark 'Yorma' an essentially more melodious sound with a more distinctive intonation.