Appeal brought on 14 June 2011 by XXXLutz Marken GmbH against the judgment of the General Court (Sixth Chamber) delivered on 24 March 2011 in Case T-54/09 XXXLutz Marken GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Natura Selection S.L.

(Case C-306/11 P)

(2011/C 238/17)

Language of the case: German

Parties

Appellant: XXXLutz Marken GmbH (represented by: H. Pannen, Rechtsanwalt)

Other parties to the proceedings:

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

— Natura Selection S.L.

Form of order sought

— Set aside the judgment under appeal;

— Refer the case back to the General Court;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

The General Court infringed Article 8(1)(b) of the Community Trade Mark Regulation ([1]) by concluding that the signs 'Linea Natura Natur hat immer Stil' and 'natura selection' were similar purely on the basis that both signs contained the word element 'natura'. That word element is not, however, the dominant element of the earlier trade mark.

In its assessment of the similarity of the signs, the General Court started from a legally incorrect understanding of the concepts of 'distinctive character' and 'descriptive character'.

Furthermore, the conclusions of the General Court concerning the similarity of the signs are contradictory and demonstrate in that regard a failure to state reasons.

In the judgment under appeal the General Court also proceeded on the basis of a distortion of the facts. Contrary to the findings of the General Court, the appellant has already demonstrated, in the proceedings before the Opposition Division and the Board of Appeal, that there is a connection between the goods at issue and the word element 'natura'.

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

Appeal brought on 24 June 2011 by the European Commission against the order of the General Court (Sixth Chamber) delivered on 13 April 2011 in Case T-320/09 Planet AE v Commission

(Case C-314/11 P)

(2011/C 238/18)

Language of the case: Greek

Parties

Appellant: European Commission (represented by: F. Dintilhac and D. Triantafyllou)

Other party to the proceedings: Planet AE

Form of order sought

The appellant claims that the Court should:

— Set aside the order of the General Court of 13 April 2011 in Case T-320/09;

— Declare the action to be inadmissible;

— Order the respondent to pay the costs.

Pleas in law and main arguments

— Misinterpretation of Decision 2008/969

The form in which the respondent was registered on the EWS, which (as distinct from other forms of registration) is based on mere suspicions, has no consequences other than reinforced monitoring measures (Article 16 of the Decision) which have no binding force vis-a -vis the respondent. The registrations at issue are erroneously confused in the order with other forms of registration, the consequences of which are different.

— The contested registrations caused no real change in legal situation

Mere monitoring of the person registered manifestly does not by itself change his legal situation.

— The respondent is not directly affected by the contested registrations

Such measures as were taken were decided on within the discretion of the competent authorising officer and subsequent to consultation and negotiation with the respondent and its bank. The measures are not direct and automatic consequences of the registrations. Direct effect is however an essential condition for admissibility (Article 263(4) TFEU).

— Failure to examine the relevant pleas and evidence in relation to indirect effect

While the action described the abovementioned consultations and negotiations, the General Court disregarded them and thereby was in breach of the principles of impartiality and objectivity.

— Failure to state reasons

The decision under appeal does not explain the nature of the 'deterioration' in the position of the applicant, who was not deprived of any economic advantage, but relieved of the obligation to transfer payments.

The same is true of the consequences of the particular registrations at issue, the binding effect of which is nowhere explained.

— Confusion of legal remedies

The position of the respondent in the consortium is relevant to the form of the contract. As an inseparable part of the contractual framework that could be the subject matter of a contractual dispute (Article 272 TFEU) but not of an application for annulment, since the legal remedies in question have parallel and autonomous validity.

— Breach of contractual freedom and the principle of consent

First, the Commission is not obliged to enter into a contract without taking any precautions, secondly, the respondent agreed to the final contractual framework. Consequently, the General Court erred in seeking legal bases, hearings etc. which are required in cases of 'penalties' and are inconsistent with the equal status of the contracting parties.

— Incorrect characterisation of the registrations as decisions

The EWS registrations constitute internal measures, precautionary measures consistent with the principle of sound financial management (Article 27 of the Financial Regulation) which were established in the said Decision 2008/969 as an internal rule of the Commission (see Article 51 of the Financial Regulation) for the information of and use by all delegated authorising officers of that institution. The registrations at issue should not be linked, moreover, with the registrations which lead to exclusion from procedures, since in the present case the contract was concluded with the respondent.

— Linking the admissibility of the action to the question whether it is well-founded

The General Court justifies its order by the need to review the competence of the Commission to issue Decision 2008/969. However, the question of competence is relevant to whether the action is well-founded and cannot determine whether it is admissible.