In fact, the case-law clearly shows that, to apply the 'departing significantly' threshold, originally tailored for three-dimensional shape marks only, the relevant sign should be unequivocally related to the concerned goods, meaning that such sign must consist of, and be perceived by consumers as, a faithful representation either of the whole product or of one of its main parts, immediately recognizable as such.

Contrastingly, the General Court took the view that any sign representing the shape of a part of a product is subject to the principles set forth in connection with three-dimensional shape marks unless it is absolutely impossible to conceptually view such sign as a part of the products it designates. As a result, instead of asking whether the contested mark could be perceived by the public as an essential part of the goods it designates, the General Court limited itself to establishing whether this mark could theoretically be used as a closing mechanism for goods in classes 9, 14, and 18.

Secondly, the Appellant submits that the General Court erred when it came to assessing the validity of the contested mark with respect to those goods that it had found capable of including a closing mechanism, by infringing the rules concerning the burden of proof and distorting the clear sense of evidence.

In particular, the General Court failed to give sufficient deference to the presumption of validity afforded to CTM registrations by requiring that the Appellant 'provide specific and substantiated information to show that the trade mark applied for has inherent inherent distinctive character' and thus shifting from Friis the burden of proving the invalidity of the contested mark.

For all the reasons above, the Appellant requests that the Court set aside the judgment under appeal, in so far as it partially upheld the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of February 24, 2010, in Case R 1590/2008-1 that had declared the contested mark invalid for the goods it covers in classes 9, 14 and 18.

([1]) OJ L 11, p. 1

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 24 February 2012 — Wim J. J. Slot v 3 H Camping-Center Heinsberg GmbH

(Case C-98/12)

(2012/C 126/17)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Wim J. J. Slot

Respondent: 3 H Camping-Center Heinsberg GmbH

Questions referred

1. Is there a matter relating to a consumer contract within the meaning of Article 15(1)(c) of Regulation No 44/2001 ([1]) if a trader has, by the design of his website, directed his activities to another Member State and a consumer domiciled in the territory of that Member State, on the basis of the information on the trader's website, travels to where his business is located and the parties sign the contract there,

   or

   does Article 15(1)(c) of Regulation No 44/2001 presuppose in that case that a distance contract is concluded?

2. If Article 15(1)(c) of Regulation No 44/2001 is to be interpreted as meaning that in that case the contract must in principle be a distance contract:

   Does the consumer jurisdiction under Article 15(1)(c) in conjunction with Article 16(2) of Regulation No 44/2001 apply if the parties to the contract enter into a distance pre-contractual commitment which subsequently flows directly into the conclusion of the contract?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12, p. 1.

Action brought on 7 March 2012 — European Commission v Kingdom of Spain

(Case C-127/12)

(2012/C 126/18)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: W. Roels and F. Jimeno Fernández, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that, by applying different tax treatment to donations and successions between beneficiaries and donees resident in Spain and those not resident in Spain, between bequeathers resident in Spain and those not resident in Spain, and between donations and similar transfers of immovable property situated within and outside of Spain, the Kingdom of Spain has failed to fulfil its obligations under Articles 21 and 63 of the Treaty on the Functioning of the European Union (TFEU) and Articles 28 and 40 of the Agreement on the European Economic Area (EEA);

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

1. In Spain, the Impuesto sobre Sucesiones y Donaciones (succession and donation tax) is a national tax, the basic provisions for which are laid down in Ley 29/87 (Law 29/87) of 18 December 1987, and in the regulation adopted by Real Decreto (Royal Decree) 1629/1991 of 8 November 1991. The management and collection of the tax was granted to the Autonomous Communities, although national legislation applies in the cases laid down therein, that is, primarily in cases in which there is no personal or real connection with an Autonomous Community.

2. In all of the Autonomous Communities which have adopted succession and donation tax legislation, the tax burden born by the tax payer is considerably lower than that imposed under national legislation, which leads to a difference in tax treatment of donations and successions between beneficiaries and donees resident in Spain and those not resident in Spain, between bequeathers resident in Spain and those not resident in Spain, and between donations and similar transfers of immovable property situated within and outside of Spain.

3. The Spanish national legislation at issue infringes Articles 21 and 63 TFEU and Articles 28 and 40 EEA.

Action brought on 9 March 2012 — European Commission v Republic of Poland

(Case C-135/12)

(2012/C 126/19)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: Z. Maluskova and D. Milanowska, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties, [1] and in any event by not informing the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Article 36 of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 31 December 2010.

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[1] OJ 2009 L 312, p. 44.

Order of the President of the Court of 14 February 2012 (references for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Sezione Terza (Italy)) — Enipower SpA (C-328/10), ENI SpA (C-329/10), Edison Trading SpA (C-330/10), E.On Produzione SpA (C-331/10), Edipower SpA (C-332/10), E.On Energy Trading SpA (C-333/10) v Autorità per l'energia elettrica e il gás (C-328/10 to C-333/10), Cassa Conguaglio per il Settore Elettrico (C-329/10) intervening parties: Terna Rete Elettrica Nazionale SpA (C-328/10, C-329/10, C-331/10 and C-332/10), Ministero dello Sviluppo Economico (C-328/10 and C-329/10), Gestore dei Servizi Elettrici SpA (C-331/10)

(Joined Cases C-328/10 to C-333/10) [1]

(2012/C 126/20)

Language of the case: Italian

The President of the Court has ordered that the cases be removed from the register.

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[1] OJ C 346, 18.12.2010.