

Question referred

In the case of a contractual term which passes on to the consumer payment of an amount which by law is payable by the seller or supplier, is the imbalance referred to in Article 3(1) of Directive 93/13⁽¹⁾ to be interpreted as arising merely from the act of passing on to the consumer an obligation to pay which by law falls on the seller or supplier, or does the fact that the Directive requires the imbalance to be significant mean that, in addition, the financial burden on the consumer must be significant in relation to the total amount of the transaction?

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts
OJ 1993 L 95, p. 29.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 16 May 2012 — Specsavers International Healthcare Ltd, Specsavers BV, Specsavers Optical Group Ltd, Specsavers Optical Superstores Ltd v Asda Stores Ltd

(Case C-252/12)

(2012/C 227/18)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicants: Specsavers International Healthcare Ltd, Specsavers BV, Specsavers Optical Group Ltd, Specsavers Optical Superstores Ltd

Defendants: Asda Stores Ltd

Questions referred

1. Where a trader has separate registrations of Community trade marks for

(i) a graphic device mark;

(ii) a word mark;

and uses the two together, is such use capable of amounting to use of the graphic device mark for the purposes of Articles 15 and 51 of Regulation 207/2009?⁽¹⁾ If yes, how is the question of use of the graphic mark to be assessed?

2. Does it make a difference if:

(i) the word mark is superimposed over the graphic device?

(ii) the trader also has the combined mark comprising graphic device and word mark registered as a Community trade mark?

3. Does the answer to A or B depend upon whether the graphic device and the words are perceived by the average consumer as (i) being separate signs; or (ii) each having an independent distinctive role? If so, how?

4. Where a Community trade mark is not registered in colour, but the proprietor has used it extensively in a particular colour or combination of colours such that it has become associated in the mind of a significant portion of the public (in a part but not the whole of the Community) with that colour or combination of colours, is the colour or colours with which the defendant uses the sign complained of relevant in the global assessment of (i) likelihood of confusion under Article 9(1)(b) or (ii) unfair advantage under Article 9(1)(c) of Regulation 207/2009? If so, how?

5. If so, is it relevant as part of the global assessment that the defendant itself is associated in the mind of a significant portion of the public with the colour or particular combination of colours which it is using for the sign complained of?

⁽¹⁾ OJ L 78, p. 1

Appeal brought on 29 May 2012 by Volkswagen AG against the judgment of the General Court (Second Chamber) delivered on 21 March 2012 in Case T-63/09 Volkswagen AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-260/12 P)

(2012/C 227/19)

Language of the case: German

Parties

Appellant: Volkswagen AG (represented by: H.-P. Schrammek, C. Drzymalla, S. Risthaus, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court of Justice should:

— set aside in its entirety the judgment of the General Court (Second Chamber) of 21 March 2012 in Case T-63/09.