

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 10 July 2012 — Ministero dello Sviluppo Economico and Autorità per la vigilanza sui Contratti Pubblici di lavori, servizi e forniture v Soa Nazionale Costruttori

(Case C-327/12)

(2012/C 295/32)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Ministero dello Sviluppo Economico and Autorità per la vigilanza sui contratti pubblici di lavori, servizi e forniture

Defendant: Soa Nazionale Costruttori — Organismo di Attestazione Spa

Question referred

Do the principles of Community competition law and Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union preclude the application of the tariffs laid down by Presidential Decree No 34 of 25 January 2000 and by Presidential Decree No 207 of 5 October 2010 for the attestation activities carried out by [a specific category of company, namely,] the *società organismi di attestazione* (SOAs)?

Appeal brought on 16 July 2012 by Pi-Design AG, Bodum France and Bodum Logistics A/S against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-331/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-337/12 P)

(2012/C 295/33)

Language of the case: English

Parties

Appellants: Pi-Design AG, Bodum France, and Bodum Logistics A/S, (represented by: H. Pernez, Advocate)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Yoshida Metal Industry Co. Ltd

Form of order sought

The appellants claim that the Court should:

— Squash the judgment of the General Court

— Annul the Community trademark 1 371 244

Subsidiarily

— Refer the case back to the General Court with the obligation to refer the case back to the Board of Appeal in the case of annulment of the latter's decision.

— Order YOSHIDA METAL INDUSTRY CO. LTD. to bear the costs.

Pleas in law and main arguments

The appellants submit that the contested judgment should be annulled on the ground that the General court infringed Article 7(1)(e)(ii) of the Community trade mark regulation by applying incorrect criteria in the identification of the essential characteristics of the contested sign and by distorting the evidence before it.

Appeal brought on 16 July 2012 by Office for Harmonisation in the Internal Market (Trade Marks and Designs), against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-331/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-338/12 P)

(2012/C 295/34)

Language of the case: English

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs), (represented by: A. Folliard-Monguiral, Agent)

Other parties to the proceedings: Yoshida Metal Industry Co. Ltd and Pi-Design AG, Bodum France, Bodum Logistics A/S

Form of order sought

The appellant claims that the Court should:

— uphold the Appeal in its entirety

— annul the Contested Judgment

— order Yoshida Metal Industry Co. Ltd to pay the costs incurred by the Office.

Pleas in law and main arguments

— The appellant submits that the General Court failed to state the reasons in support of the Contested Judgment to the extent that it did not address the Office's argument referred to at paragraph 18 of the Contested Judgment.

— The appellant also submits that the General Court breached Article 7(1)(e)(ii) CTMR. It should have observed that a two-dimensional sign may be, not only applied to, but also incorporated in a three-dimensional object. Applying Article 7(1)(e)(ii) CTMR thus requires to take account of all possible manners in which it can be envisaged, on the date of filing, that the sign in question could be embodied in a three-dimensional object. The General Court distorted the evidence by ruling that the Board of Appeal had based its examination exclusively on the goods actually marketed. In fact, the Board of Appeal made it clear that its findings are primarily based on the patents submitted by Pi-Design. In any event, reference to additional material, including patents and the goods actually marketed, should not be prohibited where such material corroborate the conclusion that the features of the contested sign, as filed, are liable to achieve a technical result once incorporated in a three dimensional object. This is the only appropriate approach for preserving the legal security and the public interest underlying Article 7(1)(e)(ii) CTMR.

Appeal brought on 16 July 2012 by Pi-Design AG, Bodum France and Bodum Logistics A/S against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-416/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-339/12 P)

(2012/C 295/35)

Language of the case: English

Parties

Appellants: Pi-Design AG, Bodum France, and Bodum Logistics A/S, (represented by: H. Pernez, Advocate)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Yoshida Metal Industry Co. Ltd

Form of order sought

The appellants claim that the Court should:

- Squash the judgment of the General Court
- Annul the Community trademark 1 372 580

Subsidiarily

- Refer the case back to the General Court with the obligation to refer the case back to the Board of Appeal in the case of annulment of the latter's decision.

- Order YOSHIDA METAL INDUSTRY CO. LTD. to bear the costs.

Pleas in law and main arguments

The appellants submit that the contested judgment should be annulled on the ground that the General court infringed Article 7(1)(e)(ii) of the Community trade mark regulation by applying incorrect criteria in the identification of the essential characteristics of the contested sign and by distorting the evidence before it.

Appeal brought on 16 July 2012 by Office for Harmonisation in the Internal Market (Trade Marks and Designs), against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-416/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-340/12 P)

(2012/C 295/36)

Language of the case: English

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs), (represented by: A. Folliard-Monguiral, Agent)

Other parties to the proceedings: Yoshida Metal Industry Co. Ltd and Pi-Design AG, Bodum France, Bodum Logistics A/S

Form of order sought

The appellant claims that the Court should:

- uphold the Appeal in its entirety
- annul the Contested Judgment
- order Yoshida Metal Industry Co. Ltd to pay the costs incurred by the Office.

Pleas in law and main arguments

- The appellant submits that the General Court failed to state the reasons in support of the Contested Judgment to the extent that it did not address the Office's argument referred to at paragraph 18 of the Contested Judgment.