

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 8 August 2012 — X BV, other party: Minister van Financiën

(Case C-380/12)

(2012/C 303/34)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X BV

Other party: Minister van Financiën

Questions referred

1. Does the expression 'eliminating the impurities' in HS Note 1 to Chapter 25 of the Harmonised System also cover the stripping of a chemical product in a crude state of certain chemical particles included therein through natural circumstances, and where the elimination thereof occurs with a view to the strengthening of (specific) natural properties of the mineral product which had previously decreased in strength due to those natural circumstances?
2. If, on the basis of the answer to the question raised in 1 above, it can be established that the elimination of impurities within the meaning of HS Note 1 to Chapter 25 has occurred, on the basis of what criteria should an assessment then be made as to whether an extracted mineral product such as decolorising earth, after being washed successively with sulphuric acid and water, can remain classified under heading 2508 40 00 of the CN on the basis of the aforementioned Note, and should not rather be regarded as a chemical product as referred to in Chapter 38 of the HS?

Appeal brought on 9 August 2012 by I Marchi Italiani Srl against the judgment of the General Court (Sixth Chamber) delivered on 28 June 2012 in Case T-133/09 I Marchi Italiani and Basile v OHIM — Osra

(Case C-381/12 P)

(2012/C 303/35)

Language of the case: Italian

Parties

Appellant: I Marchi Italiani Srl (represented by: L. Militerni and G. Militerni, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Osra SA

Form of order sought

- Set aside in part the judgment of the General Court of the European Union in so far as that Court dismissed the action brought by I Marchi Italiani Srl and ordered it to pay the costs, with the exception of those relating to the discontinuance;
- grant in part the forms of order sought at first instance and, consequently, annul the decision of the Second Board of Appeal of OHIM of 9 January 2009 — notified to the appellant on 30 January 2009 — in proceedings R 502/2008 between I Marchi Italiani Srl and Osra SA, which upheld the decision of the Cancellation Division which had allowed the application for revocation and declaration of invalidity of the mark 'B Antonio Basile 1952' following the action brought by Osra S.A.;
- order OHIM to pay the costs.

Pleas in law and main arguments

The appeal lodged by the company I Marchi Italiani Srl is based on the following three grounds:

1. Infringement of Article 135(4) of the Rules of Procedure of the General Court, in so far as the General Court erred in declaring that the documents produced by I Marchi Italiani Srl must be excluded without it being necessary to assess their probative value, and that the arguments relating to the reputation of the contested mark and to the infringement of the principle of good faith were inadmissible.
2. Infringement of Article 53(2) of Regulation No 40/94 ⁽¹⁾ (now Article 54(2) of Regulation No 207/2009), ⁽²⁾ in so far as the General Court erred in declaring that less than five years had elapsed between the date of registration of the (contested) trade mark and the date when the application for a declaration of invalidity was filed and that, therefore, the date on which the Community trade mark application was filed was irrelevant.
3. Infringement of Article 8(1)(b) of Regulation No 40/94, in so far as the General Court erred in finding that the marks at issue were similar and therefore misapplied that provision by concluding that there was a likelihood of confusion.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

⁽²⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).