

Appeal brought on 24 August 2012 by Organismos Kypriakis Galaktokomikis Viomichanias against the judgment of the General Court (Eighth Chamber) delivered on 13 June 2012 in Case T-534/10 Organismos Kypriakis Galaktokomikis Viomichanias v OHIM

(Case C-393/12 P)

(2012/C 343/09)

Language of the case: German

Parties

Appellant: Organismos Kypriakis Galaktokomikis Viomichanias (represented by: C. Milbradt and A. Schwarz, Rechtsanwälte)

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

Form of order sought

- Set aside the decision of the Eighth Chamber of the General Court of the European Union of 13 June 2012 (T-534/10);
- order the respondent to pay the costs of the proceedings, including the costs incurred during the appeal procedure.

Pleas in law and main arguments

The appeal is brought against the judgment of the Eighth Chamber of the General Court of 13 June 2012, by which the General Court dismissed the appellant's action against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 20 September 2010 relating to opposition proceedings between Organismos Kypriakis Galaktokomikis Viomichanias and Garmo AG concerning registration of the Community trade mark 'Hellim'.

The appellant relies on the following grounds of appeal.

First, the General Court misapplied Article 8(1)(b) of Regulation No 207/2009 ('the CTM Regulation'), ⁽¹⁾ by erroneously ruling out any visual or phonetic similarity between the signs 'hellim' and 'halloumi'. The General Court correctly confirmed that the marks share the same first letter, the combination of the letters 'll' and the last letters 'i' and 'm' (albeit in reverse order). However, it proceeded on the basis that, overall, any visual similarity had to be ruled out. That conclusion is contradictory. Given that the General Court confirms that there are certain similarities between the signs at issue, it cannot be concluded from this that there is no visual similarity at all.

Secondly, the General Court failed to examine in detail the distinctive character of the mark, even though a determination of the distinctive character would have been required and would

have played a decisive role in the assessment of the likelihood of confusion. The General Court was guided in that regard by the decision of the Board of Appeal and, without further examination, proceeded on the assumption that the mark is descriptive of a cheese of a particular region of Cyprus. Yet that issue is crucial. Since the particular features of a collective mark are precisely such that, to a certain extent, exceptions may be made to the rule prohibiting the registration of descriptive elements of a mark, the General Court's reasoning leads indirectly to the conclusion that a collective mark automatically has only weak distinctive character. That assumption is incompatible with Article 66 of the CTM Regulation. Even though 'Halloumi' is a collective mark, that in itself reveals nothing about the distinctive character of the mark, which should have been examined separately and in depth. Halloumi is the name of a cheese produced specifically by that collective and is not generally descriptive information in respect of cheese, soft cheese or similar. Halloumi cannot therefore be compared to 'Mozzarella', for example.

Last, the General Court's conclusion that any visual or phonetic similarities had to be ruled out, notwithstanding its confirmation of shared features, and its reasoning by which the distinctive character of the mark was, without any detailed assessment, regarded as weak has resulted in an assessment and denial of the likelihood of confusion that is wrong in law.

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

Reference for a preliminary ruling from the Asylgerichtshof (Austria) lodged on 27 August 2012 — Shamso Abdullahi

(Case C-394/12)

(2012/C 343/10)

Language of the case: German

Referring court

Asylgerichtshof

Parties to the main proceedings

Appellant: Shamso Abdullahi

Respondent: Bundesasylamt

Questions referred

1. Is Article 19 in conjunction with Article 18 of Regulation (EC) No 343/2003 ⁽¹⁾ to be interpreted as meaning that, following the agreement of a Member State in accordance