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, Rechtsanwältinnen)

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

with those provisions, that Member State is the State responsible for examining the asylum application within the meaning of the introductory part of Article 16(1) of Regulation No 343/2003, or does European law oblige the national review authority where, in the course of an appeal or review procedure in accordance with Article 19(2) of Regulation (EC) No 343/2003, irrespective of that agreement, it comes to the view that another State is the Member State responsible pursuant to Chapter III of Regulation (EC) No 343/2003 (even where that State has not been requested to take charge or has not given its agreement), to determine that the other Member State is responsible for the purposes of its appeal or review procedure? In that regard, does every asylum seeker have an individual right to have his application for asylum examined by a particular Member State responsible in accordance with those responsibility criteria?

2. Is Article 10(1) of Regulation (EC) No 343/2003 to be interpreted as meaning that the Member State in which a first irregular entry takes place ('first Member State') must accept its responsibility for examining the asylum application of a third-country national if the following situation materialises:

   A third-country national travels from a third country, entering the first Member State irregularly. He does not claim asylum there. He then departs for a third country. After less than three months, he travels from a third country to another EU Member State ('second Member State'), which he enters irregularly. From that second Member State, he continues immediately and directly to a third Member State, where he lodges his first asylum claim. At this point, less than 12 months have elapsed since his irregular entry into the first Member State.

3. Irrespective of the answer to Question 2, if the 'first Member State' referred to therein is a Member State whose asylum system displays systemic deficiencies equivalent to those described in the judgment of the European Court of Human Rights of 21 January 2011, M.S.S., 30.696/09, is it necessary to come to a different assessment of the Member State with primary responsibility within the meaning of Regulation (EC) No 343/2003, notwithstanding the judgment of the European Court of Justice of 21 December 2011 in Joined Cases C-411/10 and C-493/10 [*NS* v *Secretary of State for the Home Department and ME and Others* v *Refugee Applications Commissioner*]? In particular, can it be assumed that a stay in such a Member State cannot from the outset constitute an event establishing responsibility within the meaning of Article 10 of Regulation (EC) No 343/2003?

(1) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1)

Action brought on 28 August 2012 — Bundesrepublik Deutschland v Council of the European Union

(Case C-399/12)

(2012/C 343/11)

Language of the case: German

Parties

Applicant: Bundesrepublik Deutschland (represented by: N. Graf Vitzthum and T. Henze, Agents)

Defendant: Council of the European Union

Form of order sought

— Annul the Council decision of 18 June 2012; (1)

— Order the Council of the European Union to bear the costs.

Pleas in law and main arguments

By its action, the Bundesrepublik Deutschland (Federal Republic of Germany) challenges the Council decision of 18 June 2012 'establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be voted in the framework of the International Organisation for Vine and Wine (OIV)'.

According to the Federal Government, Article 218(9) TFEU was the incorrect legal basis for the adoption of the decision. Article 218(9) TFEU concerns in the first instance only the adoption of the positions of the Union in bodies, set up by international agreements, of which the Union is a member. Article 218(9) TFEU cannot however be applied in relation to the representation of the Member States in bodies of international organisations in which only the Member States participate by virtue of separate international treaties. Second, Article 218(9) TFEU covers only 'acts having legal effects', meaning acts binding under international law. OIV resolutions are however not acts in that sense.

Moreover no other legal basis for the adoption of the Council decision is apparent.

(1) Council Document No 11436 'establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be voted in the framework of the International Organisation for Vine and Wine (OIV)'.