

in the Objective 1 area of *Land Thüringen* (Federal Republic of Germany) (1994-1999), in accordance with Commission Decision C(94)1939/5 of 5 August 1994 **and** annul Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme in the Objective 1 area of *Land Thüringen* (Germany) (1994-1999);

2. order the Commission to pay the costs.

### Grounds of appeal and main arguments

The subject matter of this appeal is the judgment of the General Court of 19 September 2012 in Case T-265/08 *Germany v Commission*, whereby the General Court dismissed the Federal Republic of Germany's application for annulment of Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme in the Objective 1 area of *Land Thüringen* (Germany) (1994-1999), in accordance with Commission Decision C(94)1939/5 of 5 August 1994.

The appellant relies on two grounds of appeal:

First, the appellant claims that the General Court breached Article 24(2) of Council Regulation (EEC) No 4253/88, <sup>(1)</sup> in conjunction with Article 1 of Council Regulation (EC, Euratom) No 2988/95 <sup>(2)</sup> and the principle of the conferral of limited powers (Article 5(2) TEU, Article 7 TFEU; formerly Article 5 EC), in so far as it erroneously assumed that even administrative errors made by national authorities could constitute 'irregularities' justifying the application of financial corrections by the Commission (first part of the first ground of appeal). Even if a financial correction for an administrative error might in principle be conceivable, the judgment under appeal should still be set aside since the General Court unlawfully assumed that even infringements of national law and errors which do not affect the European Union budget could constitute 'irregularities' justifying financial corrections (second part of the first ground of appeal).

Secondly, the appellant submits that the General Court also breached Article 24(2) of Regulation No 4253/88, in conjunction with the principle of the conferral of limited powers (Article 5(2) TEU, Article 7 TFEU), inasmuch as it erroneously conferred on the Commission the power to carry out financial corrections on the basis of extrapolation (first part of the second ground of appeal). Even if, in principle, the Commission had such a power to extrapolate, the General Court erred in its confirmation of the nature and manner of its application in the present case. On the one hand, a loss to

the European Union budget has not been established as regards, at least, a part of the project at issue. On the other hand, the Commission should not have classified a portion of the errors complained of as systemic errors (second part of the second ground of appeal).

- (<sup>1</sup>) Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and other existing financial instruments (OJ 1988 L 374, p. 1).
- (<sup>2</sup>) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

**Appeal brought on 6 December 2012 by El Corte Inglés, SA against the judgment of the General Court (Sixth Chamber) delivered on 27 September 2012 in Case T-39/10: El Corte Inglés, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case C-578/12 P)

(2013/C 46/30)

*Language of the case: English*

### Parties

*Appellant:* El Corte Inglés, SA (represented by: E. Seijo Veiguela, abogada, J.L. Rivas Zurdo, abogado)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Emilio Pucci International BV

### Form of order sought

The appellant claims that the Court should:

- Annul the judgment of the General Court of 27<sup>th</sup> September, 2012 in case T-39/10 in its entirety.
- Order the OHIM to pay the costs incurred by El Corte Inglés, SA.
- Order Emilio Pucci International BV to pay the costs incurred by El Corte Inglés, SA.

### Pleas in law and main arguments

The appellant submits that there exists likelihood of confusion (article 8.1.b CTMR <sup>(1)</sup>) between the earlier trademarks 'EMIDIO TUCCI' and 'E. TUCCI' and the contested CTM application 'PUCCI', in respect of all the designated products in classes 3, 9, 14, 18, 25 and 28, as it has proved genuine use of all its Spanish trademarks and there is one trademark (community trademark application No. 3679528) which is not subject to this obligation, and the signs in controversy are confusingly

similar. In addition, the conditions for the application of Article 8(5) CTMR 2009 are also fulfilled in the present case, as the earlier registrations enjoy a reputation in Spain in respect of articles related to fashion and the use of a similar sign by a third party would be detrimental to, and take unfair advantage of, such reputation.

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

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**Request for a preliminary ruling from the Amtsgericht Winsen (Luhe) (Germany) lodged on 17 December 2012**  
**— Andrea Merten v ERGO Lebensversicherung AG**

(Case C-590/12)

(2013/C 46/31)

*Language of the case: German*

**Referring Court**

Amtsgericht Winsen (Local Court, Winsen) (Luhe)

**Parties in the main proceedings**

*Applicant:* Andrea Merten

*Defendant:* ERGO Lebensversicherung AG

**Question referred**

Should Article 15(1), first sentence, of Directive 90/619/EEC, <sup>(1)</sup> in consideration of Article 31(1) of Directive 92/96/EEC <sup>(2)</sup> as amended by Articles 35 and 36, in conjunction with Article 32, of Directive 2002/83/EC, <sup>(3)</sup> be interpreted as meaning that it precludes a provision — such as Article 5a(2), fourth indent, of the German Insurance Contracts Act (VVG), as amended by the third Law transposing the Directives of the Council of the European Communities on insurance law of 21 July 1994 — under which the insurance policy holder's right to withdrawal or objection expires, at the latest, one year after the payment of the first insurance premium, even if the policy holder was not adequately informed of the right to withdrawal or objection?

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<sup>(1)</sup> Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (Second Life Assurance Directive) (OJ 1990 L 330, p. 50).

<sup>(2)</sup> Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1).

<sup>(3)</sup> Directive 2002/83/EC of the European Parliament and of the Council of 05 November 2002 concerning life assurance (OJ 2002 L 345, p. 1).