Concerning the risk of confusion, Article 8(1) of Regulation No 40/94 [2] and the relevant case-law require it to be assessed globally taking into account all factors relevant to the circumstances of the case. The Second Board of Appeal of OHIM found that those factors differed in their nature, in their purpose and in their method of use, adequately substantiating that argument (paragraph 102 of the contested decision). Whilst cosmetics or jewellery may retain a link with the broad and at the same time heterogeneous fashion sector, it does not mean they have a link with or should be considered similar to the goods contained in classes 18, 24 and 25.

The extension of the effects of Article 8(5) of Regulation No 207/2009 [3] to other goods of class 9 (glasses) and 14 (jewellery, imitation jewellery and watches) and to toilet paper (class 16) is inadequately reasoned and is based on presumptions which have not been proved by the applicant in Case T-357/09. [4] Especially in such cases, as noted by that very judgment at paragraphs 70 and 71, mere hypotheses cannot be admitted and nor can marks of great repute benefit from that extension *per se*, as the existence of future risks needs to be proved, which the applicant has not done.

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[1] Judgment of the General Court in Case T-39/10 *El Corte Inglès v OHIM* of 27 September 2012, not yet published

[2] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 011 p. 1)

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

[4] Judgment of the General Court in Case T-357/09 *Pucci International v OHIM/El Corte Inglès (Emidio Tucci)* of 27 September 2012, not yet published

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Appeal brought on 13 December 2012 by the Italian Republic against the judgment delivered by the General Court (Fifth Chamber) on 27 September 2012 in Case T-257/10 Italy v Commission

(Case C-587/12 P)

(2013/C 63/18)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri and P. Gentili, avvocati dello Stato)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of 27 September 2012, served on 3 October 2012, in Case T-257/10 *Italian Republic* v *Commission* concerning an action seeking annulment under Article 264 TFEU of the Commission's decision of 24 March 2010 (C(2010) 1711 final) relating to State aid No C 4/2003 (ex NN 102/2002), notified by letter of 25 March 2010 (SG Greffe (2010) D/4224), and as a consequence also annul that decision;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

The Italian Republic puts forward four grounds in support of its appeal.

First, it alleges infringement of Article 108(2) and (3) TFEU and of Articles 4, 6, 7, 10, 13 and 20 of Regulation (EC) 659/99. [1] The General Court erred in accepting that the Commission could, in this case, adopt a new decision without opening a fresh investigation procedure in the course of which the Italian Republic and the interested parties were given an opportunity to make known their views.

Second, it pleads infringement of the second paragraph of Article 296 TFEU and of the principle of the authority of *res judicata*. The General Court should have annulled the Commission's new decision in so far as it reproduced the same, incorrect, assessment which had already formed the basis of the first decision.

Third, the appellant alleges infringement of Article 107(1) TFEU and Articles 1(1)(d) and 2 of Regulation (EC) No 1998/2006. [2] The General Court erred in holding that the contested measures were not among the measures which, under that regulation, do not constitute State aid.

Fourth, the judgment under appeal infringes Article 14 of Regulation (EC) No 659/99 and is in breach of the principle of proportionality. The General Court erred in omitting to take note of the fact that the Commission's decision required recovery of an advantage from which the undertaking had in actual fact never benefited.

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[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

[2] Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ 2006 L 379, p, 5).

Action brought on 21 December 2012 — European Commission v Hellenic Republic

(Case C-600/12)

(2013/C 63/19)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and D. Düsterhaus, Agents)

Defendant: Hellenic Republic

Form of order sought

— Declare that, by keeping in operation a malfunctioning and full landfill site (located at Griparaiika in the area of Kalamaki on Zakinthos) which does not fulfil all the relevant conditions and requirements of the environmental legislation of the European Union, the Hellenic Republic is failing to fulfil its obligations under Articles 13 and 36(1) of Directive 2008/98/EC ([1]) on waste and Articles 8, 9, 11(1)(a), 12 and 14 of Directive 1999/31/EC ([2]) on the landfill of waste. In addition, by renewing the permit for the operation of the landfill site without complying with the procedure that is laid down by Article 6(3) of Council Directive 92/43/EEC ([3]) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Hellenic Republic has failed to fulfil its obligations under that article.

— Order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

— The Greek authorities are tolerating the continued operation of a landfill site that is already overfull and have not taken the necessary measures to ensure the requisite increase in the landfill site's capacity (or an alternative means of dealing with the problem) until 31 December 2015 (when the renewed Environmental Conditions expire) or until a new landfill site begins operating on Zakinthos.

— The Greek authorities have not taken all the required corrective measures to solve a significant number of problems that have been identified by various inspection reports (25 October 2011, 26 January 2010, 26 October 2009, 11 May 2009, 6 February 2009, 26 August 2008, 13 April 2007, 8 December 2005, 7 January 2005 and 14 December 1999) and tolerate the continued problematic operation of the landfill site in question.

— The Greek authorities have not yet drawn up and approved the required conditioning plan for the Zakinthos landfill site and have not submitted an application for renewal of the waste storage permit including a risk assessment plan.

— This means that they have not complied with the requirements of Articles 13 and 36(1) of Directive 2008/98/EC on waste and Articles 8, 9, 11(1)(a), 12 and 14 of Directive 1999/31/EC on the landfill of waste.

— Also, by the Joint Ministerial Decision of 8 June 2011 the Greek authorities extended the duration of the landfill site's Environmental Conditions (which constitute the basis of the operating permit) until 31 December 2015 without the appropriate assessment of the implications that is required by Article 6(3) of Directive 92/43/EEC having been carried out.

([1]) OJ 2008 L 312, p. 3.
([2]) OJ 1999 L 182, p. 1.
([3]) OJ 1992 L 206, p. 7.

Appeal brought on 27 December 2012 by Greinwald GmbH against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2012 in Case T-333/11 *Nicolas Wessang v Office for Harmonisation in the Internal Market (Trade Marks and Designs)*

(Case C-608/12 P)

(2013/C 63/20)

Language of the case: German

Parties

Appellant: Greinwald GmbH (represented by: C. Onken, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Nicolas Wessang

Form of order sought

— Set aside the judgment of the General Court of 10 October 2012 in Case T-333/11 in so far as the application was granted;

— amend the judgment of the General Court of 10 October 2012 in Case T-333/11 so as to dismiss the application in its entirety;

— order the applicant at first instance to pay the costs.

Pleas in law and main arguments

The appellant submits that the judgment under appeal is incompatible with the legal rationale underlying Article 7(1)(b) and (c) of the Community trade mark regulation (CTMR), ([1]) in that it is based on the assumption of an increase in the likelihood of confusion owing to the conceptual similarity of the words 'foods' and 'snacks'. According to Article 7(1)(b) and (c) CTMR, signs that are devoid of any distinctive character and descriptive signs are excluded from trade mark protection. Similarities between components of signs that are devoid of any distinctive character or are descriptive cannot therefore be responsible for, or increase, any likelihood of confusion.

It follows from this that a likelihood of confusion presupposes the possible impairment of a trade mark's function as an indication of origin. However, such a function can be ascribed only to signs and components of signs that have distinctive character. If a component of a sign does not have the function of indicating origin, that function cannot be impaired as a result of the use of a similar component of a sign in a subsequent trade mark.