

The principle that components of signs that are devoid of distinctive character cannot give rise to any likelihood of confusion is, after all, reflected in the case-law of the Court, according to which the public will not generally consider a descriptive element forming part of a complex mark to be the distinctive or dominant element of the overall impression of a composite mark.

(<sup>1</sup>) OJ 2009 L 78, p.1.

**Appeal brought on 24 December 2012 by Arbos, Gesellschaft für Musik und Theater against the judgment of the General Court (Eighth Chamber) delivered on 25 October 2012 in Case T-161/06 Arbos, Gesellschaft für Musik und Theater v European Commission**

(Case C-615/12 P)

(2013/C 63/21)

*Language of the case: German*

#### Parties

*Appellant:* Arbos, Gesellschaft für Musik und Theater (represented by: H. Karl, Rechtsanwalt)

*Other party to the proceedings:* European Commission

#### Form of order sought

— Set aside in its entirety the judgment of the General Court of 25 October 2012 in Case T-161/06, the case to be determined by the Court of Justice of the European Union;

— in the alternative, refer the case back to the General Court.

#### Pleas in law and main arguments

The appellant's appeal is founded on breach of procedural requirements, their unlawful application having led to the action being dismissed as inadmissible, as a result of which the appellant's interests have been adversely affected, and also infringement of European Union law by the General Court.

In its decision the General Court dismissed the application as inadmissible as it was said not to have been sufficiently reasoned having regard to the legal basis, and thus did not comply with Article 44(1)(c) of the Rules of Procedure. That is not reflected in the case-file. The requirements of Article 44(1)(c) of the Rules of Procedure were applied arbitrarily and contrary to the purpose of the provision.

The General Court also failed to take any account at all, in relation to the question of merit in accordance with Article 44(1)(c) of the Rules of Procedure, of the further submissions in the appellant's reply and of the arguments in its observations on the plea of inadmissibility, or took account of them solely in order to argue their inadequacy, and thereby contrary to the rules of procedure and disregarding all arguments refused to allow the application to be admitted.

By its decision to dismiss the application on the ground of inadmissibility the General Court took a decision that could have been taken in that form and challenged as such as long ago as 2007, and thereby infringed any procedural foreseeability, transparency and efficiency. Accordingly there has been no fair and balanced procedure.

**Request for a preliminary ruling from the Cour de Cassation (France) lodged on 2 January 2013 — Cartier Parfums Lunettes SAS and Axa Corporate Solutions Assurances SA v Ziegler France SA, Montgomery Transport SARL, Inko Trade SRO, Jaroslava Mateja, Groupama Transport**

(Case C-1/13)

(2013/C 63/22)

*Language of the case: French*

#### Referring court

Cour de Cassation

#### Parties to the main proceedings

*Applicants:* Cartier Parfums Lunettes SAS and Axa Corporate Solutions Assurances SA

*Defendants:* Ziegler France SA, Montgomery Transport SARL, Inko Trade SRO, Jaroslava Mateja, Groupama Transport

#### Question referred

Must Article 27(2) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (<sup>1</sup>) be interpreted as meaning that the jurisdiction of the court first seised is established, if neither party has claimed that it lacks jurisdiction or if the court has accepted its jurisdiction by a decision which is irrevocable for any reason whatsoever, including the exhaustion of legal remedies?

(<sup>1</sup>) OJ 2001, L 12, p. 1.