

The Community trade mark JACKSON SHOES cannot be confused with the trade name JACSON OF SCANDINAVIA AB all the more since they have coexisted for quite some time and neither party has complained of damage resulting from their coexistence, nor called the competition between the products into question. That is because consumers also realise, when faced with the conflicting signs, that they are faced with a trade mark and trade name which, unquestionably, are two distinct signs of a different type.

Moreover, as recognised in the judgment under appeal and accepted by the parties, there is no confusion between the signs on the part of the average consumer and, therefore, they are not likely to be confused with one another, and ‘... the assessment of the similarity of marks must take account of the overall impression created by them (see Case T-438/07 *Spa Monopole v OHIM — De Francesco Import (SpagO)* ECR II-4115, paragraph 23 and case-law cited).’

Furthermore, for a correct decision to be made in this case, it is highly important to take note of the fact that OHIM has authorised the registration of various marks containing the expression ‘JAKSON’ in relation to shoes, and cannot ignore that reality entirely when deciding on an application to register a new Community trade mark with the same (ordinary) name, ‘JAKSON’.

In ignoring that reality, OHIM acted arbitrarily and thereby infringed the principle of equality.

The judgment under appeal infringes Articles 8(4) and 53(1)(c) of Council Regulation (EC) No 207/2009<sup>(2)</sup> of 26 February 2009 on the Community trade mark.

<sup>(1)</sup> First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

<sup>(2)</sup> OJ 2009 L 78, p. 1.

**Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 2 April 2013 — Turbo.com BV, other party: Staatssecretaris van Financiën**

(Case C-163/13)

(2013/C 171/37)

*Language of the case: Dutch*

#### Referring court

Hoge Raad der Nederlanden

#### Parties to the main proceedings

*Applicant:* Turbo.com BV

*Defendant:* Staatssecretaris van Financiën

#### Question referred

Should the national authorities and judicial bodies, on the basis of the law of the European Union, refuse to apply the VAT exemption in respect of an intra-Community supply where it is established, on the basis of objective evidence, that there was VAT fraud in respect of the goods concerned and that the taxable person knew or should have known that he was participating therein, even if the national law does not make provision under those circumstances for refusing the exemption?

**Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 2 April 2013 — Turbo.com Mobile Phone’s BV v Staatssecretaris van Financiën**

(Case C-164/13)

(2013/C 171/38)

*Language of the case: Dutch*

#### Referring court

Hoge Raad der Nederlanden

#### Parties to the main proceedings

*Applicant:* Turbo.com Mobile Phone’s BV

*Defendant:* Staatssecretaris van Financiën

#### Question referred

Should the national authorities and judicial bodies, on the basis of the law of the European Union, refuse the right to deduct where it is established, on the basis of objective evidence, that there was VAT fraud in respect of the goods concerned and that the taxable person knew or should have known that he was participating therein, even if the national law does not make provision under those circumstances for refusing the right to deduct?

**Action brought on 5 April 2013 — European Commission v Republic of Poland**

(Case C-169/13)

(2013/C 171/39)

*Language of the case: Polish*

#### Parties

*Applicant:* European Commission (represented by: N. Yerrell and J. Hottiaux, acting as Agents)