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 [2] of 26 February 2009 on the Community trade mark.

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[1] 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).

[2] 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)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to ensure the application of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities, ([1]) with regard to self-employed drivers, and in any event by not notifying the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under Articles 2(1), 3 to 7 and 11 of that directive;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

Directive 2002/15/EC has been applicable to self-employed drivers since 23 March 2009.

([1]) OJ 2002 L 80, p. 35.

Request for a preliminary ruling from the Cour administrative d'appel de Lyon (France) lodged on 9 April 2013 — Maurice Leone, Blandine Leone v Garde des Sceaux, Ministre de la Justice, Caisse nationale de retraite des agents des collectivités locales

(Case C-173/13)

(2013/C 171/40)

Language of the case: French

Referring court

Cour administrative d'appel de Lyon

Parties to the main proceedings

Applicants: Maurice Leone, Blandine Leone

Defendants: Garde des Sceaux, Ministre de la Justice, Caisse nationale de retraite des agents des collectivités locale

Questions referred

1. Do Article L. 24 and Article R. 37, read in conjunction, of the Civil and Military Retirement Pensions Code, as amended by the Finance (Amendment) Law No 2004-1485 of 30 December 2004 and by Decree No 2005-449 of 10 May 2005, indirectly discriminate between men and women, within the meaning of Article 157 of the Treaty on the Functioning of the European Union?

2. Does Article 15 of Decree 2003-1306 of 26 December 2003 on the retirement scheme for civil servants affiliated to the Caisse nationale de retraites des agents des collectivités locales indirectly discriminate between men and women, within the meaning of Article 157 of the Treaty of the Functioning of the European Union?

3. In the event that one of the first two questions is answered in the affirmative, can such indirect discrimination be justified on the basis of Article 157(4) of the Treaty on the Functioning of the European Union?

Appeal brought on 9 April 2013 by Council of the European Union against the judgment of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-496/10: Bank Mellat v Council of the European Union

(Case C-176/13 P)

(2013/C 171/41)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: S. Boelaert and M. Bishop, Agents)

Other parties to the proceedings: Bank Mellat, European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Fourth Chamber) of 29 January 2013 in Case T-496/10;

— give a definitive ruling on the case and dismiss the application brought by Bank Mellat against the contested measures;

— order Bank Mellat to pay the costs incurred by the Council in the proceedings at first instance and in this appeal.

Pleas in law and main arguments

The Council considers that the judgment of the General Court of 29 January 2012 in Case T-496/10, Bank Mellat v. Council, is vitiated by the following errors of law: