

3. In the event that, also under the abovementioned conditions, the time at which the application was filed is relevant:

Is the trade mark to be declared invalid if it is not clarified, and can no longer be clarified, whether it had acquired a distinctive character, following the use made of it, at the time when the application was filed? Or does the declaration of invalidity require the applicant seeking that declaration to prove that the trade mark had not acquired a distinctive character, following the use made of it, at the time when the application was filed?

⁽¹⁾ Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

Appeal brought on 25 April 2013 by Kalliopi Nikolaou against the judgment delivered by the General Court (Second Chamber) on 20 February 2013 in Case T-241/09 Nikolaou v Court of Auditors of the European Union

(Case C-220/13 P)

(2013/C 189/19)

Language of the case: Greek

Parties

Appellant: Kalliopi Nikolaou (represented by: V. Khristianos, diki-goros)

Other party to the proceedings: Court of Auditors of the European Union

Form of order sought

— set aside the judgment of the General Court of 20 February 2013 in Case T-241/09 and refer the case back to the General Court for judgment;

— order the defendant to pay the costs.

Pleas in law and main arguments

- The appellant submits that the judgment of the General Court of 20 February 2013 contains legal rulings which clearly infringe rules of European Union law and she challenges them by means of an appeal.
- According to the appellant, the judgment under appeal must be set aside because of infringement of fundamental rights

and principles of European Union law, incorrect interpretation and application of European Union law, and the exceeding of jurisdiction (competence).

Specifically, the grounds of appeal are as follows:

- First, infringement of the presumption of innocence.
- Second, infringement of the principle requiring cooperation in good faith with the Tribunal d'arrondissement, Luxembourg, pursuant to Article 4(3) TEU.
- Third, exceeding of jurisdiction.
- Fourth, incorrect interpretation and application of European Union law as regards the conditions for non-contractual liability and as regards Decision 99/50 of the Court of Auditors.

Action brought on 25 April 2013 — Kingdom of the Netherlands v European Commission

(Case C-223/13)

(2013/C 189/20)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M.K. Bulterman, J. Langer, acting as Agents)

Defendant: European Commission

Form of order sought

— Annul Commission Regulation (EU) No 93/2013 of 1 February 2013 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices, as regards establishing owner-occupied housing price indices (OJ 2013 L 33, p. 14) in so far as Article 4(1) of Regulation No 93/2013 cannot be separated from the other provisions of that regulation;

— in the alternative, annul Article 4(1) of Regulation No 93/2013;

— order the European Commission to pay the costs.

Pleas in law and main arguments

First plea:

Infringement of Article 5(3) of Regulation No 2494/95 ⁽¹⁾ and/or of the case-law of the Court of Justice as, under Article 4(1) of Regulation No 93/2013, Eurostat is designated the entity that is to establish a legally binding manual, and not the Commission as an EU institution.