

- order OHIM to pay all the costs of both sets of proceedings;
- order VICINI SpA to reimburse SIC in respect of all the costs relating to the proceedings before the Opposition Division and the Board of Appeal.

#### **Pleas in law and main arguments**

The decision of the General Court is vitiated by inadequate and contradictory reasoning. The fact that the graphic element is visually dominant when compared with the word element of the mark applied for and that the words 'Giuseppe' and 'Design' have been added to the term 'ZANOTTI' are not sufficient to rule out the possibility of a likelihood of confusion between the marks at issue, in view of the intrinsic qualities of the elements in question, in particular their lack of distinctive character.

The General Court erred in finding that the word 'ZANOTTI', which is the word element of the mark applied for, does not have an independent distinctive role, thus also ruling out in this respect a likelihood of confusion between the marks at issue.

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**Appeal brought on 5 June 2013 by Società Italiana Calzature SpA against the judgment of the General Court (Third Chamber) delivered on 9 April 2013 in Case T-337/11 Società Italiana Calzature SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

(Case C-309/13 P)

(2013/C 233/04)

*Language of the case: Italian*

#### **Parties**

*Appellant:* Società Italiana Calzature SpA (represented by: A. Rapisardi and C. Ginevra, avvocati)

*Other party to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), VICINI SpA

#### **Form of order sought**

- Set aside judgment No 564400 delivered by the General Court of the European Union in Cases T-337/11 on 9 April 2013 and notified on that date and grant the claims made by Società Italiana Calzature SpA ('SIC') in the proceedings at first instance by annulling the decision of the Second Board of Appeal of OHIM of 8 April 2011 in Case R 0918/2010-2 and declare that VICINI's Community trade mark No 4337.754 is to be refused registration on the ground of lack of novelty, as it is similar to such a degree that it may be confused with the earlier word sign 'ZANOTTI', which was registered in the European Union under No 244 277 and is owned by SIC;
- order OHIM to pay all the costs of both sets of proceedings;

- order VICINI SpA to reimburse SIC in respect of all the costs relating to the proceedings before the Opposition Division and the Board of Appeal.

#### **Pleas in law and main arguments**

The decision of the General Court is vitiated by inadequate and contradictory reasoning. The fact that the graphic element is visually dominant when compared with the word element of the mark applied for and that the words 'By' and 'Giuseppe' have been added to the term 'ZANOTTI' are not sufficient to rule out the possibility of a likelihood of confusion between the marks at issue, in view of the intrinsic qualities of the elements in question, in particular their lack of distinctive character.

The General Court also erred in finding that the word 'ZANOTTI', which is the word element of the mark applied for, does not have an independent distinctive role, thus also ruling out in this respect a likelihood of confusion between the marks at issue.

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**Request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 7 June 2013 — Užsienio reikalų ministerija v Vladimir Peftiev, BelTechExport ZAO, Sport-pari ZAO, BT Telecommunications PUE**

(Case C-314/13)

(2013/C 233/05)

*Language of the case: Lithuanian*

#### **Referring court**

Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania)

#### **Parties to the main proceedings**

*Appellant:* Užsienio reikalų ministerija (Ministry of Foreign Affairs)

*Respondents:* Vladimir Peftiev, BelTechExport ZAO, Sport-pari ZAO, BT Telecommunications PUE

*Other party to the proceedings:* Finansinių nusikaltimų tyrimų tarnyba prie Vidaus reikalų ministerijos (Financial Crime Investigation Service attached to the Ministry of the Interior)

#### **Questions referred**

1. Must Article 3(1)(b) of Council Regulation (EC) No 765/2006<sup>(1)</sup> of 18 May 2006 be interpreted as meaning that the authority which is responsible for application of the exemption set out in Article 3(1)(b) of that regulation enjoys an absolute discretion when taking a decision on whether to grant that exemption?

2. If the answer to the first question is in the negative, by which criteria should that authority be guided, and by which criteria is it bound, when taking a decision on whether to grant the exemption set out in Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006?
3. Must Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006 be interpreted as meaning that the authority which is responsible for granting the aforementioned exemption is entitled or obliged, when carrying out the assessment as to whether to grant the exemption sought, to have regard for, inter alia, the fact that the applicants submitting the request are seeking to give effect to their fundamental rights (in this case, the right to a judicial remedy), although it must also ensure that if, in the specific case, the exemption is granted, the objective of the sanction provided for will not be negated and that the exemption will not be misused (for example, if the amount of money earmarked for securing a legal remedy would be manifestly disproportionate in relation to the scale of the legal services provided)?
4. Must Article 3(1)(b) of Council Regulation (EC) No 765/2006 of 18 May 2006 be interpreted as meaning that one of the bases capable of providing justification for not granting the exemption set out in that provision may be the illegal nature of the acquisition of the funds in respect of the use of which that exemption is to be implemented?

<sup>(1)</sup> Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2006 L 134, p. 1).

**Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 11 June 2013 — X**

(Case C-318/13)

(2013/C 233/06)

*Language of the case: Finnish*

**Referring court**

Korkein hallinto-oikeus

**Parties to the main proceedings**

Applicant: X

**Questions referred**

1. Is Article 4(1) of Directive 79/7/EEC <sup>(1)</sup> (Directive on the progressive implementation of the principle of equal treatment of men and women in matters of social security) to be interpreted in such a way that it precludes

national legislation on the basis of which the different life expectancies of men and women are used as an actuarial calculation criterion for a statutory social benefit payable due to an accident, when, by using this criterion, the lump sum benefit paid to a man is smaller than that paid to a woman of the same age and in a similar situation in other respects?

2. If the answer to the first question is affirmative, does the case involve a sufficiently serious breach of EU law, this being a condition for Member State liability, particularly when account is taken of the following:

— in its case-law, the CJEU has not taken a specific position on the question of whether sex-based actuarial factors may be taken into account in the determination of statutory social security benefits falling within the scope of application of Directive 79/7/EEC;

— in its judgment issued in case C-236/09 *Test-Achats* the CJEU has stated that Article 5(2) of Directive 2004/113/EC <sup>(2)</sup> (Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services), which allows such factors to be taken into consideration, is invalid but has stipulated a transitional period prior to the provision becoming invalid; and

— in Directives 2004/113/EC and 2006/54/EC <sup>(3)</sup> (Directive on the implementation of the principle of equal opportunity and equal treatment of men and women in matters of employment and occupation) the EU's legislature has allowed, on certain conditions, sex-based actuarial factors to be taken into account in the calculation of benefits referred to in these Directives, and on the basis of this the national legislature has assumed that these factors can also be considered in the area of statutory social security referred to in this case?

<sup>(1)</sup> OJ 1979 L 6, p. 24.

<sup>(2)</sup> OJ 2004 L 373, p. 37.

<sup>(3)</sup> OJ L 204, p. 23.

**Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 20 June 2013 — Marjan Noorzia**

(Case C-338/13)

(2013/C 233/07)

*Language of the case: German*

**Referring court**

Verwaltungsgerichtshof