Request for a preliminary ruling from the Thüringer Oberlandesgericht (Germany) lodged on 11 June 2013 — Udo Rätzke v S+K Handels GmbH

(Case C-319/13)

(2013/C 260/38)

Language of the case: German

Referring court

Thüringer Oberlandesgericht

Parties to the main proceedings

Appellant: Udo Rätzke

Respondant: S+K Handels GmbH

Questions referred

Is Article 4(a) of Commission Delegated Regulation (EU) No 1062/2010 ([1]) of 28 September 2010 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of televisions to be interpreted as meaning that dealers are subject to an obligation to label televisions (from 30 November 2011) only if those televisions were supplied by the supplier together with the relevant label (from 30 November 2011) in accordance with Article 3(1)(a) of that regulation, or does the labelling obligation also apply to dealers (from 30 November 2011) in respect of televisions supplied by suppliers before 30 November 2011 without the relevant labels, so that dealers are obliged to request suppliers (in good time, subsequently) to provide labels for those televisions?

([1]) OJ L 314, p. 64.

Appeal brought on 14 June 2013 by Fercal — Consultadoria e Serviços, Lda against the judgment delivered on 10 April 2013 by the General Court (Fifth Chamber) in Case T-360/11 Fercal — Consultadoria e Serviços v OHIM — Parfums Rochas (Patrizia Rocha)

(Case C-324/13 P)

(2013/C 260/39)

Language of the case: Portuguese

Parties

Appellant: Fercal — Consultadoria e Serviços, Lda (represented by: A.J. Rodrigues, advogado)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of 10 April 2013 of the Fifth Chamber of the General Court, notified on 11 April 2013, in Case T-360/11 and, consequently, annul the decision of the Second Board of Appeal of OHIM of 8 April 2011 in Case … R2355/2010-2 in annulment proceedings No 2004 C, in accordance with the relevant provisions of European Union law;

— declare that the appellant's mark is still valid and in force;

— order the respondent to pay the costs of the proceedings.

Grounds of appeal and main arguments

Article 60 of Regulation No 207/2009 ([1]) provides, in relation to the lodging and form of an appeal, that a notice of appeal must be filed in writing within two months and that, within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

The appellant submits that, although sent by mail on 27 January 2011, the grounds of appeal were received on 2 February 2011, that is to say outside of the four-month time limit provided for in Article 60 of Regulation No 207/2009.

The rules relating to the calculation of time limits and to notification are set out in Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Pursuant to Rule 70(1) and (2) thereof, when calculated in terms of days, weeks, months or years, calculation shall start on the day following notification, namely the day of actual receipt of the document notified.

Where the time limit is given in months, as in the present case, the time limit shall expire in the relevant month four months later on the day which has the same number as date of notification (Rule 70(4)).

In the event of unforeseen circumstances or *force majeure* unattributable to either party, the time limit shall be suspended.

In the present case, since the appellant was notified on 27 September 2010 and was provided with four months within which to file a notice of appeal, the time limit commenced on 28 September 2010 and ended four months later on the same day, namely on 28 January 2011.