

thereby be placed on the same level as the co-legislators, which would constitute an abuse of the ordinary legislative procedure provided for under Article 294 TFEU, going above and beyond the Commission's right under Article 293(2) TFEU to initiate legislation and depriving of practical effect the Council's right of amendment under Article 293(1) TFEU. According to the Council, it would also be inconsistent with Article 10(1) and (2) TEU, because the Commission would no longer be an institution with an executive function but a participant in the legislative process at the same level as the institutions vested with democratic legitimacy.

Secondly, the Council submits that the withdrawal of the proposal for a regulation also constitutes a breach of the principle of sincere and mutual cooperation under Article 13(2) TEU: (i) the proposal was withdrawn very belatedly; after a great number of tripartite meetings ('trialogues') had taken place during the first reading stage, the Commission had nevertheless withdrawn its proposal on the day on which the Parliament and the Council were to initial the agreement which they had reached; and (ii) the Commission had not, before proceeding with the withdrawal, exhausted all the procedural possibilities under the Council's internal regulations.

Lastly, the Council submits that the contested withdrawal was in breach of the duty under the second paragraph of Article 296 TFEU to state the reasons on which that act of withdrawal was based. According to the Council, the Commission did not provide any explanation for its decision to withdraw; nor did it publish that decision.

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**Appeal brought on 22 July 2013 by Fabryka Łożysk Tocznych-Kraśnik S.A. against the judgment of the General Court (First Chamber) delivered on 14 May 2013 in Case T-19/12 Fabryka Łożysk Tocznych-Kraśnik v Office for Harmonisation in the Internal Market (Trade Marks and Designs) — Impexmetal**

(Case C-415/13 P)

(2013/C 274/28)

*Language of the case: Polish*

**Parties**

*Appellant:* Fabryka Łożysk Tocznych-Kraśnik S.A. (represented by: P. Borowski, adwokat)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Impexmetal S.A.

**Form of order sought**

The appellant claims that the Court should:

- set aside in its entirety the judgment of the General Court and allow in full the application of 9 January 2012 by annulling the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 October 2011;
- should that head of claim not be upheld, set aside the judgment of the General Court in its entirety and refer the case back to the General Court for reconsideration;
- order the other parties to the appeal to pay the costs of the proceedings, including the costs incurred by the appellant before the Board of Appeal and Opposition Division of the Office for Harmonisation in the Internal Market and those incurred in the proceedings before the General Court.

**Pleas in law and main arguments**

The appellant submits that the General Court breached Article 8(1)(b) of Regulation No 207/2009 (1) by applying it in a factual context to which that provision could not apply.

According to the appellant, the incorrect application of that provision was attributable to a mistaken finding by the General Court that the appellant's trade mark was similar to the trade mark of the intervener and that consequently there was a likelihood of confusion on the part of the public. The appellant maintains that the General Court failed to have regard for the following facts:

- goods coming under the designation 'machines and tool-making machines', which are covered by the appellant's mark, and goods coming under the designation 'bearings', which are covered by the intervener's mark, are characterised by the fact that they differ significantly and are certainly not complementary goods;
- the appellant's mark and that of the intervener differ significantly in visual terms;
- the appellant's mark contains within it a word element in the form of the noun 'Kraśnik', which has a crucial bearing on the differences, in visual, phonetic and conceptual terms, between the opposing marks;
- the appellant's mark and that of the intervener differ significantly in phonetic terms;
- the appellant's mark constitutes part of the name of his undertaking, and that name was in use long before the date of the trade-mark application;
- that mark is a historically established sign which distinguishes the appellant;
- the marks in question have for a long time peacefully co-existed on the one market;

— the similarity between the opposing marks does not justify any claim whatsoever that this might be the source of a likelihood of confusion.

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(<sup>1</sup>) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

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**Action brought on 24 July 2013 — European Commission  
v Council of the European Union**

**(Case C-425/13)**

(2013/C 274/29)

*Language of the case: English*

**Parties**

*Applicant:* European Commission (represented by: G. Valero Jordana, F. Castillo de la Torre, Agents)

*Defendant:* Council of the European Union

**The applicant claims that the Court should:**

— annul Article 2, second sentence, and Section A of the Addendum/Annex to the Council Decision authorising the

opening of negotiations on linking the EU emissions trading scheme with an emissions trading system in Australia, or, in the alternative,

— annul the Council Decision and to maintain the effects of the contested decision in case it is totally annulled, and

— order the Council of the European Union to pay the costs.

**Pleas in law and main arguments**

First plea: breach of Articles 13(2) TEU, 218(2) to (4) TFEU and 295 TFEU and the principle of institutional balance. The Commission submits that the Council infringed Article 218 TFEU by imposing unilaterally upon the Commission a detailed procedure that creates *ex novo* powers for the Council and obligations upon the Commission that are not based in that provision. The Council has also infringed Article 13(2) TEU, in conjunction with Article 218(4) TFEU, and the principle of institutional balance, because the Council has expanded its powers conferred on it by the Treaties to the detriment of the Commission and the European Parliament

Second plea: breach of Articles 13(2) TEU and 218 TFEU, and the principle of institutional balance, since the contested Decision provides that the detailed negotiating positions of the Union shall be established by the Special Committee or the Council. Article 218(4) TFEU gives only a consultative role to the Special Committee.