

2. Does it make a difference to the answer to the first question whether the State where the worker has gone to live and work during the course of the tax year is not a Member State of the European Union?

Request for a preliminary ruling from the Hof van Beroep te Gent (Belgium) lodged on 16 January 2014 — Property Development Company NV v Belgische Staat

(Case C-16/14)

(2014/C 102/20)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties to the main proceedings

Applicant: Property Development Company NV

Defendant: Belgische Staat

Question referred

Is interest on borrowed capital which, according to Article 35(4) of the Fourth Council Directive 78/660/EEC ⁽¹⁾ of 25 July 1978, may be included in the production costs to the extent that it relates to the period of production, part of the taxable amount of an application within the meaning of Article 5(6) of Sixth Council Directive 77/388/EEC ⁽²⁾ of 17 May 1977, that is to say, part of the ‘cost price’ within the meaning of Article 11A(1) of the Sixth Directive and/or the incidental expenses within the meaning of Article 11A(2) of the Sixth Directive?

⁽¹⁾ Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11).

⁽²⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Appeal brought on 21 January 2014 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) against the judgment of the General Court (First Chamber) delivered on 8 November 2013 in Case T-536/10 Kessel Marketing & Vertriebs GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-31/14 P)

(2014/C 102/21)

Language of the case: German

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Walicka, acting as Agent)

Other parties to the proceedings: Kessel Marketing & Vertriebs GmbH, Janssen-Cilag GmbH

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal;

- dismiss the action brought against the decision of the Fourth Board of Appeal of OHIM of 21 September 2010 in Case R 708/2010-4; in the alternative, refer the case back to the General Court;
- order the applicant at first instance to pay the costs of both the proceedings at first instance and the appeal proceedings.

Pleas in law and main arguments

The General Court confirmed the decision of the Board of Appeal that the restriction made by the then applicant to the list of goods and services is imprecise if it takes as its basis the criterion of the absence of a prescription requirement. Nevertheless, the General Court stated that that lack of precision could not make the application for restriction altogether irrelevant. OHIM takes the view that, in the case of a lack of precision, the restriction of the list of goods and services cannot be registered, nor can the comparison of the goods and services be based on that restriction. The Board of Appeal could not have taken the corresponding application into account because that lack of precision was established in this case.

The General Court also held that the restriction applied for by the then applicant was inadmissible in so far as it was based on the fact that the goods in question were not subject to a prescription requirement. The criterion of the absence of a prescription requirement is, it is submitted, unsuitable for the formation of a sub-group within that of the goods declared. It is not a suitable criterion for the formation of a sub-group of pharmaceutical products claimed by means of a trade mark. In the absence of harmonisation at European level, the question as to whether or not a prescription requirement exists is dependent on the national legal provisions in force for pharmaceutical products, which may be changed at any time by the national legislature. The right to protection by a Community trade mark cannot, however, depend on a criterion which comes under national law or on a criterion which may change over time. That is not contested by OHIM. However, the General Court nevertheless held that the Board of Appeal erred in not taking the restriction into account in its totality. The Board of Appeal could not regard the restriction as altogether irrelevant. It was required to make the comparison of the goods on the basis of the goods covered by the notified trade mark, after the restriction by the then applicant, and of the goods covered by the earlier trade mark, without thereby taking the criterion of the prescription requirement into account.

In the view of OHIM, the judgment is to that extent based on an infringement of Article 43(1) of the Regulation on the Community trade mark,⁽¹⁾ in conjunction with Article 2(2) of the Regulation implementing the Regulation on the Community trade mark,⁽²⁾ because a lack of precision makes the list of goods and services inadmissible in its entirety. An inadmissible restriction cannot be registered or taken into account when a comparison is made of goods. The judgment also infringes the principle of the binding nature of the application which underlies the Community trade mark system. The list of goods and services must, as such, be assessed in the form applied for by the party seeking registration. OHIM has not been given any powers to reformulate the list.

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

⁽²⁾ 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).

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 23 January 2014 — ERSTE Bank Hungary Zrt. v Attila Sugár

(Case C-32/14)

(2014/C 102/22)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: ERSTE Bank Hungary Zrt.

Defendant: Attila Sugár