V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 22 May 2014 by Pêra-Grave — Sociedade Agrícola, Unipessoal, L[da] against the judgment of the General Court (First Chamber) delivered on 27 February 2014 in Case T-602/11: Pêra-Grave — Sociedade Agrícola, Unipessoal, L[da] v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-249/14 P)

(2014/C 361/02)

Language of the case: English

Parties

Appellant: Pêra-Grave — Sociedade Agrícola, Unipessoal, L[da] (represented by: J. de Oliveira Vaz Miranda de Sousa, advogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Fundação Eugénio de Almeida

Form of order sought

The appellant claims that the Court should:

— set aside the Judgment of the General Court of 27 February 2014 in Case T- 602/11;

— alternatively, refer the case back to the General Court for final judgment;

— order the OHIM as defendant in the proceedings before the General Court to pay the costs of the proceedings of the first instance and appeal.

Pleas in law and main arguments

The Appellant submits that the Judgment under Appeal is flawed to the extent that the General Court misinterpreted and misapplied Article 8(1)(b) CTMR ([1]). This plea in law comprises three parts and is based in three sets of arguments as follows:

1. The General Court failed to properly substantiate the existence of a genuine likelihood of confusion between the marks at issue. Finding a genuine likelihood of confusion between two trademarks properly and objectively cannot merely consist in affirming that, in the light of the identity of their respective goods, and in view of the very low visual similarity and the low degree of phonetic similarity that exists between them (and in spite of their conceptual dissimilarity), it cannot be ruled out that the relevant consumer may perceive their respective goods as originating from the same undertaking or from economically linked undertakings. 'Likelihood of confusion' does not mean a mere possibility of confusion but rather a probability that confusion will occur. A likelihood of confusion cannot be presumed just because there is some degree of similarity between two trademarks, even when their respective goods are identical.

2. The Judgment under Appeal has also misapplied Article 8(1)(b) CTMR in so far as the General Court failed to take into account the impact and weight of the conceptual dissimilarity of the signs within the overall assessment of the likelihood of confusion between trademarks presenting a very low degree of visual similarity and a low degree of aural similarity. According to established case law the conceptual content of the mark applied for should suffice to counteract the very low visual similarity and the low aural similarity that, according to the General Court, exists between the mark applied for and the earlier mark.

3. Finally the General Court has misapplied Article 8(1)(b) CTMR by assessing the existence of a likelihood of confusion between the signs at stake without taking into account all the factors relevant to the circumstances of the case for establishing the likelihood of confusion. More concretely, the General Court ignored a crucial circumstance that was part of the factual background of the proceedings: the origins, the history, the geographical meaning of the word included in the trademarks at stake in the proceedings and its symbolic connection with the goods designated by said marks. Consequently and to that extent, the General Court also distorted the factual background of the proceedings.

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

Action brought on 18 July 2014 — European Commission v Republic of Austria

(Case C-346/14)

(2014/C 361/03)

Language of the case: German

Parties

Applicant: European Commission (represented by: E. Manhaeve and G. Wilms, acting as Agents)

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should:

— declare that the defendant failed to fulfil its obligations under Article 4(3) TEU in conjunction with Article 288 TFEU, in so far as by granting permission for the construction of a hydropower plant on the Schwarze Sulm (Black Sulm) it incorrectly applied the provisions of Article 4(1) in conjunction with Article 4(7) of the Water Framework Directive ([1]) (WFD);

— order Republic of Austria to pay the costs.

Pleas in law and main arguments

Austria sees to avoid the prohibition of deterioration which is laid down in Article 4(1) as a fundamental principle and thereby failed to satisfy the conditions for receiving an exception under Article 4(7) WFD.

The application of the directive ratione temporis is based on the Court's case-law, according to which during the period allowed for transposition of a directive, Member States must refrain from taking any measures liable seriously to compromise the result prescribed by the directive (Article 4(3) TEU in conjunction with Article 288 TFEU).