

- in the alternative, set aside the judgment of the Sixth Chamber of the General Court of 22 May 2014 in Case T-95/13 and refer the case back to the General Court;
- order OHIM to pay the costs.

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

The appellant puts forward two grounds of appeal, the first of which is divided into three parts:

#### 1. First ground of appeal

The judgment under appeal infringes Article 7(1)(c) of Regulation No 207/2009 <sup>(1)</sup> for three reasons:

- When assessing whether a sign is registrable, account should be taken of the wording of the goods and/or services applied for. That did not happen in the proceedings before the General Court. Instead, the General Court took account of websites belonging to the appellant and the list of goods covered by a US trade mark, which were not the subject of the dispute.
- Even with the meaning assigned by the General Court to the word HIPERDRIVE, only one characteristic of a drive is described by the sign HIPERDRIVE. However, in the present case, no essential characteristics of the applied-for goods themselves were described by the alleged description of the part of the drive integrated into the goods applied for. The General Court therefore erred in law in the application of the criteria set out in the recent European case-law in that regard (see judgment of 15 January 2013 in Case T-625/11 *BSH v OHIM (ecoDoor)* <sup>(2)</sup> and judgment of 10 July 2014 in Case C-126/13 P *BSH v OHIM* <sup>(3)</sup>, paragraph 27).
- The General Court's allegedly incorrect assumption that 'HIPER' must be equated with 'hyper', although those terms are never used interchangeably, is based on the inaccurate assertion that both 'HIPER' and 'hyper' are pronounced identically in English. Despite the appellant's numerous examples to the contrary, that allegedly incorrect assertion is neither verified nor substantiated by the General Court. According to the case-law, the question whether the grounds of a judgment of the General Court are contradictory or inadequate is a question of law.

#### 2. Second ground of appeal:

- The judgment under appeal infringes the general principles of Union law, namely, the principle of equal treatment and the prohibition of arbitrary decisions. It is the clear practice of OHIM not to equate the element HIPER with 'hyper' in the case of registrations. That practice existed before the registration of the sign at issue and exists afterwards as well. The present case is different from cases in which applicants rely merely on previous registrations. The fact that, following the objection to the registrations at issue, 'HIPER' trade marks were no longer objected to by OHIM shows that the objection to the trade mark application at issue clearly infringes the principle of equal treatment and the prohibition of arbitrary decisions.

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

<sup>(2)</sup> ECLI:EU:T:2013:14.

<sup>(3)</sup> ECLI:EU:C:2014:2065.

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**Reference for a preliminary ruling from Supreme Court (Ireland) made on 7 August 2014 — C v M**

**(Case C-376/14)**

(2014/C 351/09)

*Language of the case: English*

### **Referring court**

Supreme Court

**Parties to the main proceedings**

*Applicant:* C

*Defendant:* M

**Questions referred**

1. Does the existence of the French proceedings relating to the custody of the child preclude, in the circumstances of this case, the establishment of habitual residence of the child in Ireland?
  2. Does either the father or the French courts continue to maintain custody rights in relation to the child so as to render wrongful the retention of the child in Ireland?
  3. Are the Irish courts entitled to consider the question of habitual residence of the child in the circumstances where she has resided in Ireland since July, 2012 at which time her removal to Ireland was not in breach of French law?
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