

**Parties to the main proceedings**

*Applicant:* PGE Górnictwo i Energetyka Konwencjonalna SA

*Defendant:* Prezes Urzędu Regulacji Energetyki

**Questions referred**

1. Is Article 107 TFEU, in conjunction with Article 4(3) TEU and Article 4(2) of the Decision of the European Commission of 25 September 2007 <sup>(1)</sup>, to be interpreted as meaning that, where the European Commission classifies State aid as being compatible with the common market, the national court is not entitled to review whether the domestic provisions which have been deemed to constitute permitted State aid are consistent with the assumptions made in the Commission Communication relating to the methodology for analysing State aid linked to stranded costs (the Stranded Costs Methodology)?
2. Is Article 107 TFEU, in conjunction with Article 4(3) TEU and Article 4(1) and (2) of the Decision of the European Commission of 25 September 2007, interpreted in the light of points 3.3 and 4.2 of the Stranded Costs Methodology, to be interpreted as meaning that, in the context of the implementation of a State aid programme which the European Commission has found to be compatible with the common market, the annual adjustment of the stranded costs incurred by group-affiliated power generators is carried out on the assumption that the position with respect to the group affiliation of the power generator as recorded in the annexes to the legislative measure examined by the Commission is alone decisive, or is it necessary to verify in respect of every year for which stranded costs are adjusted whether, during that period, the beneficiary of the State aid programme linked to the stranded costs actually belongs to the group to which the other power generators covered by the aid programme also belong?

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<sup>(1)</sup> Commission Decision 2009/287/EC of 25 September 2007 on State aid awarded by Poland as part of Power Purchase Agreements and the State aid which Poland is planning to award concerning compensation for the voluntary termination of Power Purchase Agreements (notified under document number C(2007) 4319) (OJ 2009 L 83, p. 1).

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**Appeal brought on 11 December 2014 by Brandconcern BV against the judgment of the General Court (First Chamber) delivered on 30 September 2014 in Case T-51/12: Scooters India Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case C-577/14 P)**

(2015/C 089/04)

*Language of the case:* English

**Parties**

*Appellant:* Brandconcern BV (represented by: A. von Mühlendahl, H. Hartwig, Rechtsanwälte, G. Casucci, N. Ferretti, avvocati)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Scooters India Ltd

**Form of order sought**

The appellant claims that the Court should:

- annul the contested judgment of the General Court of 30 September 2014, and dismiss the appeal by Scooters India Limited against the contested decision of the Board of Appeal of 1 December 2011, Case R 2312/2010-1,
- secondarily, annul the contested judgment to the extent that it had annulled the contested decision for having dismissed the appeal of Scooters India Limited as regards ‘vehicles; apparatus for locomotion by land, air or water’,

— order the Defendant and Scooters India Limited to bear the costs of the proceedings.

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

The appellant bases its appeal on two pleas, alleging infringement of Article 50 (1) (a) of Council Regulation (EC) N° 207/2009 <sup>(1)</sup>, of 26 February 2009, on the Community trade mark, and, secondarily, an infringement of procedural rules by the General Court by not dismissing the application for annulment brought by Scooters India Limited to the extent it found the application unfounded.

Scooters India Limited is the proprietor of a Community trade mark LAMBRETTA registered, inter alia, for ‘vehicles; apparatus for locomotion by land, air or water’ in class 12 of the International Classification. The appellant had brought an action to declare the mark revoked, inter alia, for the goods in class 12, on the basis of Article 50 (1) (a) of Regulation 207/2009 on grounds of absence of genuine use. This request was granted by the Cancellation Division of OHIM. The appeal brought by Scooters India Limited was dismissed by the First Board of Appeal of OHIM as unfounded. In the contested judgment, the General Court annulled the decision of the First Board of Appeal of OHIM. The General Court held that OHIM was obliged, on grounds of legal certainty, to take into accounts goods in class 12 for which genuine use had been alleged, even though these goods did not fall within the definition of the goods for which the mark was registered.

The appellant submits that the General Court erred in law by requiring OHIM to take into account use of the mark LAMBRETTA alleged to have been made for certain goods, such as spare parts, even though these goods do not fall within the definition of the goods for which the mark LAMBRETTA is registered in class 12. The appellant asserts that under a proper interpretation of Article 50 (1) (a) of Regulation 207/2009 only use made for goods falling within the definition of the indications in the registration can be taken into account. The appellant asserts that the General Court was bound to apply the judgment of the Court of Justice in Case C-307/10, Chartered Institute of Patent Attorneys (IP TRANSLATOR).

The appellant therefore contends that the contested judgment must be annulled and the application for annulment of the contested decision of the Board of Appeal must be dismissed.

The appellant further submits, as a secondary plea, that, even it would be accepted that OHIM was under an obligation to take into account goods in class 12 for which genuine use was alleged to have been made, the General Court committed a procedural violation by annulling the contested decision without any limitation. After having accepted in the contested judgment that the proprietor of the mark LAMBRETTA had not proved genuine use of the mark for any goods for which it was registered (but obliging OHIM to take into account nevertheless the use made for other goods in the same class), the General Court was required to confirm the contested decision to the extent that the Board of Appeal had found no genuine use for the goods for which the mark was registered.

<sup>(1)</sup> OJ L 78, p. 1.

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**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 17 December 2014 — Patrick Breyer v Bundesrepublik Deutschland**

**(Case C-582/14)**

**(2015/C 089/05)**

*Language of the case: German*

### **Referring court**

Bundesgerichtshof