



Reports of Cases

Judgment of the Court (Eighth Chamber) of 22 September 2016 — Pensa Pharma v EUIPO

(Case C-442/15 P)¹

(Appeal — EU trade mark — Word mark PENSA PHARMA — Figurative mark pensa — Applications for a declaration of invalidity of the holders of the word marks pentasa — Declaration of invalidity — Proceedings before EUIPO — Change in the subject matter of the proceedings — New plea before the General Court)

1. *Appeal — Grounds — Incorrect assessment of the facts and evidence — Inadmissibility — Review by the Court of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted — Plea alleging distortion of the facts — Necessity of indicating precisely the evidence alleged to have been distorted and showing the errors of appraisal which led to that distortion (Art. 256 TFEU; Statute of the Court of Justice, Art. 58, first para.; Rules of Procedure of the Court of Justice, Art. 168(1)(d)) (see paras 21, 59)*
2. *EU trade mark — Appeals procedure — Action before the EU judiciary — Jurisdiction of the General Court — Pleas as a matter of public policy — To be considered of the Court's own motion — Expiry of the period of validity of an earlier mark — Not included (see paras 26, 27)*
3. *Actions for annulment — Grounds — Lack of or inadequate statement of reasons — Error of assessment — Distinction (Arts 263 TFEU and 296 TFEU) (see para. 35)*
4. *EU trade mark — Appeals procedure — Action before the EU judiciary — Jurisdiction of the General Court — Pleas as a matter of public policy — To be considered of the Court's own motion — Whether the grounds which the bodies of EUIPO are required to provide are well founded — Not included (see paras 36, 37)*
5. *EU trade mark — Appeals procedure — Action before the EU judiciary — Jurisdiction of the General Court — Review of the lawfulness of decisions of the Boards of Appeal — Re-examination of the facts in the light of evidence not previously submitted before EUIPO bodies — Not included (Council Regulation No 207/2009, Art. 65) (see para. 47)*
6. *Appeal — Grounds — Grounds of a judgment vitiated by an infringement of EU law — Operative part well founded for other legal reasons — Rejection (Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.) (see para. 51)*

¹ — OJ C 414, 14.12.2015.

Operative part

The Court:

1. Dismisses the appeal;
2. Orders Pensa Pharma SA to pay the costs