

4. In particular, the Appellant maintains that to comply with the principles on the presumption of validity enjoyed by registered Community trademarks and the apportionment of the burden of proof in invalidity actions, the General Court should have reversed the challenged decision, on the basis that Nanu-Nana had not met its burden, as it had not been able to demonstrate what the norm and customs of the relevant sector were at the date of filing of the contested trademark and therefore that the contested trademark did not depart significantly from them.
5. Secondly, in requiring that evidence of acquired distinctiveness be provided for each of the European Union Member States the General Court openly infringed the CJEU's ruling in the Lindt case, whereby 'even if it is true (...) that the acquisition by a mark of distinctive character through use must be proved for the part of the European Union in which that mark did not, ab initio, have such character, it would be unreasonable to require proof of such acquisition for each individual Member State' [see decision of May 24, 2012, *Chocoladefabriken Lindt & Sprüngli v OHIM*, C-98/11 P, EU: C:2012:307, paragraph 62].
6. In particular, the Appellant points out that if the General Court had applied the ruling of the CJEU in the Lindt case correctly, it would have reached the conclusion that the contested trademark had acquired distinctive character through use and, consequently, it would have reversed the Board of Appeal's decision on this point.
7. In light of the above the Appellant requests that the Court of Justice annul the judgment under appeal and order both the OHIM and Nanu-Nana to pay the costs incurred by the Appellant during these proceedings.

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

Appeal brought on 13 July 2015 by Louis Vuitton Malletier against the judgment of the General Court (Second Chamber) delivered on 21 April 2015 in Case T-360/12: Louis Vuitton Malletier v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co. KG

(Case C-364/15 P)

(2015/C 414/17)

Language of the case: English

Parties

Appellant: Louis Vuitton Malletier (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi, N. Parrotta, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co. KG

Form of order sought

The appellant claims that the Court should:

- Annul the judgment of the General Court of the European Union (Second Chamber) of April 21, 2015, in Case T-360/12, served upon the Appellant on April 29, 2015;
- Order OHIM to pay the costs incurred by the Appellant during these proceedings;
- Order Nanu-Nana to pay the costs incurred by the Appellant during these proceedings.

Pleas in law and main arguments

1. By means of the present appeal Louis Vuitton Malletier (hereafter referred to as 'Louis Vuitton' or the 'Appellant') requests that the Court of Justice annul the decision of the General Court of the European Union (Second Chamber) of April 21, 2015, in Case T-360/12 (the 'judgment under appeal'), whereby the General Court dismissed Louis Vuitton application against the decision of the First Board of Appeal of OHIM of May 16, 2012, in Case R 1854/2011-1, which had declared Community trademark registration No. 658751 (figurative) invalid in its entirety, for lack of distinctive character.
2. The present appeal is aimed at showing that the General Court erred in concluding that the provision of Article 7(i)(b) CTM Regulation ⁽¹⁾ is applicable to the contested trademark.
3. In upholding the Board of Appeal's decision that had declared the contested trademark invalid for not being inherently distinctive the General Court infringed the rules concerning the burden of proof in invalidity proceedings.
4. In particular, the Appellant maintains that to comply with the principles on the presumption of validity enjoyed by registered Community trademarks and the apportionment of the burden of proof in invalidity actions, the General Court should have reversed the challenged decision, on the basis that Nanu-Nana had not met its burden, as it had not been able to demonstrate what the norm and customs of the relevant sector were at the date of filing of the contested trademark and therefore that the contested trademark did not depart significantly from them.
5. In light of the above the Appellant requests that the Court of Justice annul the judgment under appeal and order both the OHIM and Nanu-Nana to pay the costs incurred by the Appellant during these proceedings.

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

**Appeal brought on 12 August 2015 by Pensa Pharma, SA against the judgment of the General Court
(Second Chamber) delivered on 3 June 2015 in Case T-544/12: Pensa Pharma, SA v Office for
Harmonisation in the Internal Market (Trade Marks and Designs), Ferring BV, Farmaceutisk
Laboratorium Ferring A/S**

(Case C-442/15 P)

(2015/C 414/18)

Language of the case: English

Parties

Appellant: Pensa Pharma, SA (represented by: R. Kunze, G. Würtenberger, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Ferring BV, Farmaceutisk Laboratorium Ferring A/S

Form of order sought

The appellant claims that the Court should:

- annul the judgement of the General Court of 3 June 2015 in joint cases T-544/12 and T-546/12,
- grant the action for annulment brought by Pensa Pharma S.A. against the Board of Appeal's decisions in Case R-1883/2011-5 as well as well as Case R-1884/2011-S,