

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 30 November 2015 — Costin Popescu v Guvernul României, Ministerul Afacerilor Interne, Direcția Regim Permise de Conducere și Înmatriculare a Vehiculelor, Direcția Rutieră, Serviciul Public Comunitar Regim Permise de Conducere și Înmatriculare a Vehiculelor

(Case C-632/15)

(2016/C 068/29)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant: Costin Popescu

Defendants: Guvernul României, Ministerul Afacerilor Interne, Direcția Regim Permise de Conducere și Înmatriculare a Vehiculelor, Direcția Rutieră, Serviciul Public Comunitar Regim Permise de Conducere și Înmatriculare a Vehiculelor

Question referred

In the case of riders of mopeds in possession of an official document which gave them the right to ride on the public highway before 19 January 2013, do the provisions of Directive 2006/126/EC of the European Parliament and of the Council⁽¹⁾ permit the Romanian State to impose a requirement, for the purpose of being able to continue to ride a moped after that date, to obtain a driving licence by undergoing tests/examinations similar to those required for other motor vehicles?

⁽¹⁾ Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast) (OJ 2006 L 403, p. 18).

Appeal brought on 2 December 2015 by Toni Klement against the judgment of the General Court (Third Chamber) of 24 September 2015 in Case T-211/14 Toni Klement v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-642/15 P)

(2016/C 068/30)

Language of the case: German

Parties

Appellant: Toni Klement (represented by: J. Weiser, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal of the General Court of 24 September 2015 in Case T-211/14;
- order the defendant to pay the costs of the proceedings.

Grounds of appeal and main arguments

The appellant relies on three grounds of appeal:

1. It is not disputed that the trade mark at issue was used exclusively with the additional word element 'Bullerjan'. The appellant claims that, in determining the distinctive character of the added element 'Bullerjan', the evidence was distorted. The General Court deemed the character of the added element to be (only) normally distinctive. There is no basis in the evidence presented for a finding of (only) normally distinctive character, since the evidence contains no detail on the extent, duration and intensity of the element 'Bullerjan', which itself is registered as a trade mark.
2. In the second ground of appeal, the appellant claims that the General Court contradicted itself in its reasoning for finding that the trade mark at issue was highly distinctive. On the one hand, the General Court stated that the trade mark at issue has an 'unusual form' yet, on the other hand, confirmed that other manufacturers sell ovens of a very similar form. There is a further contradiction in the General Court's finding, on the one hand, that the highly distinctive character of the trade mark at issue is independent of its possible functionality whereas, on the other hand, the highly distinctive character is not called into question by the very similar form of other ovens, since this such similarity could be attributed to the pursuit of a particular technical result. The reasoning of the General Court is therefore contradictory from two points of view and is thus vitiated by errors of law.
3. In the third ground of appeal, the appellant claims that Article 15(1)(a) of Regulation No 207/2009 ⁽¹⁾ was, in several respects, incorrectly interpreted and applied. First, in the context of the examination of the distinctiveness of the trade mark required under Article 15(1)(a) of Regulation No 207/2009, the General Court did not follow Court of Justice's case-law on determining the distinctiveness of three-dimensional product trade marks. The General Court did not in that regard compare the trade mark at issue with the oven forms commonly used in the sector, as required by the Court of Justice's case-law. Second, the General Court assumed that the possible functionality of the form of the trade mark at issue was irrelevant for determining its distinctiveness. The General Court thereby infringed the recognised principle that account must be taken of all the relevant circumstances of the case at issue in determining the distinctiveness of a trade mark. Third, the General Court did not follow the Court of Justice's case-law on use so as to preserve the rights of a trade mark proprietor in connection with a registered trade mark used as part of a composite trade mark. The General Court considered it sufficient in that regard that a trade mark used as part of a composite trade mark is still recognised as a reference of origin to the former trade mark. The General Court failed to have regard to the obligation laid down clearly in Article 15(1)(a) of Regulation No 207/2009 and the Court of Justice's case-law always to assess whether the distinctiveness of the registered trade mark has been influenced. The General Court failed to conduct that assessment.

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

Request for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 14 December 2015 — Jyske Finans A/S v Ligebehandlingsnævnet, acting on behalf of Ismar Huskic

(Case C-668/15)

(2016/C 068/31)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Jyske Finans A/S

Defendant: Ligebehandlingsnævnet, acting on behalf of Ismar Huskic