

6. The Applicant's interpretation of Article 66(2) CTMR results from

1) the inner logic of Regulation No. 207/2009, in particular the fact that

- i. Article 66(2) CTMR constitutes an exception within Regulation No. 207/2009 as, according to Article 7(1)(c) CTMR, trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the geographical origin of the goods or of rendering of the service shall not be registered,
- ii. according to Article 67(2) CTMR, the regulations governing use of a Community collective trade mark consisting of geographical indication must authorise *any* person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark, and consequently, a Community collective mark consisting of geographical indication is *never* capable of distinguishing goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

2) an interpretation of that provision in the light of Regulation No. 1151/2012⁽²⁾ and in the light of the TRIPs-Agreement, according to which geographical indications should enjoy a high level of protection, and according to which presentations of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the *geographical origin* of the good, should be prohibited.

7. The Applicant is of the opinion that the qualities established by the General Court in connection with DARJEELING can also be transferred to services such as business consultancy or telecommunication services, and are able to strengthen the power of attraction of the contested mark in that regard. Further, the Applicant points out that the General Court did not provide any substantiated grounds in its judgment, as to why the qualities associated with the mark DARJEELING could not be transferred to services in Class 35 and 38, which, in itself is an error in law.

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

⁽²⁾ Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
OJ L 343, p. 1

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 16 December 2015 — Mohammad Zadeh Khorassani v Kathrin Pflanz

(Case C-678/15)

(2016/C 106/19)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Mohammad Zadeh Khorassani

Defendant: Kathrin Pflanz

Question referred

Is the reception and transmission of an order which relates to a portfolio management (Article 4(1)(9) of the MiFID) an investment service within the meaning of the first sentence of Article 4(1)(2)⁽¹⁾ in conjunction with point 1 of Section A of Annex I to the MiFID?

⁽¹⁾ Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).