

**Judgment of the Court (Grand Chamber) of 18 July 2017 (request for a preliminary ruling from the Kammergericht Berlin — Germany) — Konrad Erzberger v TUI AG**

(Case C-566/15) <sup>(1)</sup>

*(Reference for a preliminary ruling — Free movement of workers — Principle of non-discrimination — Election of workers' representatives to the supervisory board of a company — National legislation restricting the right to vote and to stand as a candidate to employees of establishments located in the national territory)*

(2017/C 300/03)

Language of the case: German

**Referring court**

Kammergericht Berlin

**Parties to the main proceedings**

Applicant: Konrad Erzberger

Defendant: TUI AG

*intervening parties:* Vereinigung Cockpit e.V., Betriebsrat der Tui AG/Tui Group Services GmbH, Frank Jakobi, Andreas Barczewski, Peter Bremme, Dierk Hirschel, Michael Pönipp, Wilfried H. Rau, Carola Schwirn, Anette Stempel, Ortwin Strubelt, Marcell Witt, Wolfgang Flintermann, Stefan Weinhofer, ver.di -Vereinte Dienstleistungsgewerkschaft

**Operative part of the judgment**

Article 45 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which the workers employed in the establishments of a group located in the territory of that Member State are deprived of the right to vote and to stand as a candidate in elections of workers' representatives to the supervisory board of the parent company of that group, which is established in that Member State, and as the case may be, of the right to act or to continue to act as representative on that board, where those workers leave their employment in such an establishment and are employed by a subsidiary belonging to the same group established in another Member State.

<sup>(1)</sup> OJ C 90, 7.3.2016.

**Judgment of the Court (Second Chamber) of 20 July 2017 (request for a preliminary ruling from the Audiencia Provincial de Alicante — Spain) — Ornuo Co-operative Limited, formerly The Irish Dairy Board Co-operative Limited v Tindale & Stanton Ltd España, SL**

(Case C-93/16) <sup>(1)</sup>

*(Reference for a preliminary ruling — Intellectual property — EU trade mark — Unitary character — Regulation (EC) No 207/2009 — Article 9(1)(b) and (c) — Uniform protection of the right conferred by an EU trade mark against the likelihood of confusion and detriment to reputation — Peaceful coexistence of that mark with a national mark used by a third party in part of the European Union — Absence of peaceful coexistence elsewhere in the European Union — Perception of the average consumer — Differences of perception which may exist in different parts of the European Union)*

(2017/C 300/04)

Language of the case: Spanish

**Referring court**

Audiencia Provincial de Alicante

**Parties to the main proceedings**

*Applicant:* Ornuia Co-operative Limited, formerly The Irish Dairy Board Co-operative Limited

*Defendant:* Tindale & Stanton Ltd España, SL

**Operative part of the judgment**

1. Article 9(1)(b) Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark must be interpreted as meaning that the fact that, in part of the European Union, an EU trade mark and a national mark peacefully coexist does not allow the conclusion that in another part of the European Union, where peaceful coexistence between that EU trade mark and the sign identical to that national mark is absent, there is no likelihood of confusion between that EU trade mark and that sign.
2. Article 9(1)(b) of Regulation No 207/2009 must be interpreted as meaning that the elements which, according to the European Union trade marks court hearing an infringement action, are relevant for assessing whether the proprietor of an EU trade mark is entitled to prohibit the use of a sign in part of the European Union not covered by that action, may be taken into account by that court to assess whether that proprietor is entitled to prohibit the use of that sign in the part of the European Union which is the subject of the infringement action, provided that the market conditions and the sociocultural circumstances are not significantly different in one of those parts of the European Union and in the other.
3. Article 9(1)(c) of Regulation No 207/2009 must be interpreted as meaning that the fact that, in part of the European Union, an EU trade mark with a reputation and a sign peacefully coexist does not allow the conclusion that in another part of the European Union, where that peaceful coexistence is absent, there is due cause legitimising the use of that sign.

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<sup>(1)</sup> OJ C 156, 2.5.2016.

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**Judgment of the Court (First Chamber) of 19 July 2017 (request for a preliminary ruling from the Corte suprema di cassazione — Italy) — Abercrombie & Fitch Italia Srl v Antonino Bordonaro**

(Case C-143/16) <sup>(1)</sup>

*(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(1) — Article 2(2)(a) — Article 6(1) — Age discrimination — On-call employment contract which may be concluded with persons under 25 years of age — Automatic termination of the employment contract when the worker reaches 25 years of age)*

(2017/C 300/05)

Language of the case: Italian

**Referring court**

Corte suprema di cassazione

**Parties to the main proceedings**

*Applicant:* Abercrombie & Fitch Italia Srl

*Defendant:* Antonino Bordonaro