

**Appeal brought on 27 July 2016 by Ice Mountain, Ibiza, SL against the judgment of the General Court (Third Chamber) delivered on 25 May 2016 in Case T-5/15 Ice Mountain Ibiza v EUIPO — Marbella Atlantic Ocean Club (ocean beach club ibiza)**

**(Case C-412/16 P)**

(2017/C 046/13)

*Language of the case: Spanish*

**Parties**

*Appellant:* Ice Mountain Ibiza, SL (represented by: J. L. Gracia Albero and F. Miazzetto, abogados)

*Other party to the proceedings:* European Union Intellectual Property Office (EUIPO)

**Form of order sought**

The appellant claims that the Court should:

- Set aside in its entirety the judgment of the General Court of 25 May 2016, Ice Mountain Ibiza v EUIPO — Marbella Atlantic Ocean Club (ocean beach club ibiza) (T-5/15, not published, EU:T:2016:311);
- Give judgment upholding in their entirety the appellant's claims made in the proceedings before the General Court;
- Order the European Union Intellectual Property Office to pay the costs, including those incurred to date before the First Board of Appeal of EUIPO, and before the General Court of the European Union.

**Pleas in law and main arguments**

The appeal alleges misapplication of Article 8(1)(b) of Regulation No 207/2009 <sup>(1)</sup> and is based, in particular, on the following pleas in law and arguments.

**1. In the judgment under appeal, the General Court erred in finding that the element 'OCEAN' was distinctive**

The General Court misinterpreted the evidence adduced in the case and assessed it illogically.

In addition, the General Court failed to apply the relevant case-law, namely, the case-law of the Court of Justice of the European Union in the judgments in Case C-479/12 <sup>(2)</sup> (the General Court assessed the evidence adduced too strictly in the light of the difficulty in discharging the burden of proof) and C-24/05 P <sup>(3)</sup> (it disregarded the impression of the relevant consumer).

**2. In the judgment under appeal, the General Court erred in finding the dominant character of the various elements**

Distortion of the facts. Inconsistency in the reasoning in the judgment under appeal in order to substantiate the dominant character of the word elements.

Failure to apply the case-law of the Court of Justice in the judgments in C-251/95 <sup>(4)</sup> and C-342/97 <sup>(5)</sup> (the General Court used a completely distorted example of a relevant consumer).

Misapplication of the case-law of the General Court in the judgment in T-134/06 <sup>(6)</sup> (inconsistent application of the definition given of 'dominant element').

Failure to apply the case-law of the General Court in Joined Cases T-83/11 and T-84/11. <sup>(7)</sup> In the judgment under appeal, the General Court disregarded the existing case-law, which applies where a particular market is saturated.

**3. In the judgment under appeal, the General Court erred in finding that the marks were similar, by not taking into account the relevant circumstances for the purpose of that analysis**

Failure to apply the case-law of the Court of Justice developed in the judgment in Case C-251/95 together with the judgments of the Court in Cases C-361/04 P<sup>(8)</sup> and C-342/97.<sup>(9)</sup>

**4. In the judgment under appeal, the General Court erred in concluding that there was a likelihood of confusion.**

<sup>(1)</sup> Council Regulation (EC) 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

<sup>(2)</sup> Judgment of 13 February 2014, *H. Gautzsch Großhandel*, C-479/12, EU:C:2014:75.

<sup>(3)</sup> Judgment of 22 June 2006, *Storck v OHIM*, C-24/05 P, EU:C:2006:421.

<sup>(4)</sup> Judgment of 11 November 1997, *SABEL*, C-251/95, EU:C:1997:528.

<sup>(5)</sup> Judgment of 22 June 1999, *Lloyd Schuhfabrik Meyer*, C-342/97, EU:C:1999:323.

<sup>(6)</sup> Judgment of 13 December 2007, *Xentral v OHIM — Pages jaunes (PAGESJAUNES.COM)*, T-134/06, EU:T:2007:387.

<sup>(7)</sup> Judgment of 13 November 2012, *Antrax It v OHIM — THC (Radiateurs de chauffage)*, T-83/11 and T-84/11, EU:T:2012:592.

<sup>(8)</sup> Judgment of 12 January 2006, *Ruiz-Picasso and Others v OHIM*, C-361/04 P, EU:C:2006:25.

<sup>(9)</sup> Judgment of 22 June 1999, *Lloyd Schuhfabrik Meyer*, C-342/97, EU:C:1999:323.

**Appeal brought on 27 July 2016 by Ice Mountain, Ibiza, SL against the judgment of the General Court (Third Chamber) delivered on 25 May 2016 in Case T-6/15 Ice Mountain Ibiza v EUIPO — Marbella Atlantic Ocean Club (ocean ibiza)**

**(Case C-413/16 P)**

(2017/C 046/14)

*Language of the case: Spanish*

**Parties**

*Appellant:* Ice Mountain Ibiza, SL (represented by: J. L. Gracia Albero and F. Miazzetto, abogados)

*Other party to the proceedings:* European Union Intellectual Property Office (EUIPO)

**Form of order sought**

The appellant claims that the Court should:

- Set aside in its entirety the judgment of the General Court of 25 May 2016, *Ice Mountain Ibiza v EUIPO — Marbella Atlantic Ocean Club (ocean ibiza)* (T-6/15, not published, EU:T:2016:310);
- Give judgment upholding in their entirety the appellant's claims made in the proceedings before the General Court;
- Order the European Union Intellectual Property Office to pay the costs, including those incurred to date before the First Board of Appeal of EUIPO, and before the General Court of the European Union.

**Pleas in law and main arguments**

The appeal alleges misapplication of Article 8(1)(b) of Regulation No 207/2009<sup>(1)</sup> and is based, in particular, on the following pleas in law and arguments.

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