

II. Second Ground of Appeal: Infringement of Article 7(1)(b) of Regulation No. 207/2009 Non-application of the Principle of Speciality

4. The General Court qualified the relevant goods in an overly broad sense as inexpensive, everyday consumer goods, the purchase of which is not preceded by a lengthy period of reflection. This led to the General Court's wrong conclusion that the relevant public would have a low level of attention particularly with respect to the features on the packaging.
5. The General Court should rather have analysed with respect to the very specific products (i.e., confectionary, chocolate, chocolate products, pastries and ice-creams) what level of attention the consumers do apply and what role the very specific packaging as covered by the mark applied for thereby plays. The General Court missed to look at the very typical purchase situation with respect to those products.
6. By not taking into account the specifics of the relevant goods the General Court did not apply the principle of speciality. Had the General Court done it correctly, it would have taken into account that consumers of the relevant goods are used to give a high level of attention to the colours, the shape and the design of the packaging. The consumers of the relevant goods would have no problems at all to identify the source of the products on the mere basis of the combination of lines, colours and shapes as it is covered by the mark applied for.

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

Appeal brought on 4 August 2016 by Wolf Oil Corp. against the judgment of the General Court (Single Judge) delivered on 1 June 2016 in Case T-34/15: Wolf Oil Corp. v European Union Intellectual Property Office

(Case C-437/16 P)

(2016/C 428/05)

Language of the case: English

Parties

Appellant: Wolf Oil Corp. (represented by: P. Maeyaert, J. Muyltermans, advocaten)

Other party to the proceedings: European Union Intellectual Property Office

Form of order sought

The appellant claims that the Court should:

- annul the decision of the General Court of 1 June 2016 in case T-34/15
- order the EUIPO and the intervener at first instance to bear their own costs and to pay those incurred by Wolf Oil.

Pleas in law and main arguments

By its appeal, the appellant (Wolf Oil), asks the Court of Justice to set aside the judgment of the General Court of 1 June 2016 in case T-34/15 ('judgment under appeal'), in which the General Court rejected the action brought by Wolf Oil against the decision of Fifth Board of Appeal of the European Union Intellectual Property Office ('EUIPO') of 31 October 2014 (Case R 1596/2013-5). The appeal is based on two pleas in law.

By its first plea, Wolf Oil challenges the judgement under appeal for a lack of proper motivation and distortion of evidence, to the extent that it failed to provide any response to a number of arguments and inconsistencies raised by Wolf Oil in support of the plea that the EUIPO had incorrectly applied the likelihood of confusion (Article 8.1.b) of Regulation (EC) on the European Union Trademark Regulation ⁽¹⁾ (as recently amended by Regulation 2015/2424 ⁽²⁾) ('EUTMR').

By its second plea, Wolf alleges that the judgment under appeal has violated Article 8.1.b) EUTMR, by having wrongly applied the principles of a likelihood of confusion. The plea is divided into three parts. The first two parts of the second plea allege an incorrect interpretation of the rule, well-established in the case-law of the General Court and the Court of Justice, that conceptual differences between two trademarks may, to some extent, counteract the visual and phonetic similarities between them. The third part of the second plea challenges the judgement under appeal to the extent that, in the global assessment of the likelihood of confusion, it failed to account of the actual use of the trademarks made on the market.

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

⁽²⁾ Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) OJ L 341, p. 21

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 11 August 2016 — Roland Becker v Hainan Airlines Co. Ltd.

(Case C-447/16)

(2016/C 428/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Roland Becker

Defendant: Hainan Airlines Co. Ltd

Question referred

Where passengers are transported on two flights without any significant stopover at the connecting airports, is the place of departure of the first leg of the journey to be regarded as being the place where the services were provided under the second indent of Article 5(1)(b) of Regulation (EC) No 44/2001,⁽¹⁾ even when the claim advanced in the application for compensation under Article 7 of Regulation (EC) No 261/2004⁽²⁾ is based on a disruption to the second leg of the journey and the action is brought against the party to the contract of carriage, which, although it was the operating air carrier for the second flight, was not the operating air carrier for the first flight?

⁽¹⁾ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

⁽²⁾ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 11 August 2016 — Mohamed Barkan, Souad Asbai, Assia Barkan, Zakaria Barkan, Nousaiba Barkan v Air Nostrum L.A.M. S.A.

(Case C-448/16)

(2016/C 428/07)

Language of the case: German

Referring court

Bundesgerichtshof