**Parties to the main proceedings**

*Appellants:* FlibTravel International SA, Léonard Travel International SA

*Respondents:* AAL Renting SA, Haroune Tax SPRL, Saratax SCS, Ryad SCRI, Taxis Bachir & Cie SCS, Abdelhamid El Barjraji, Abdelouahab Ben Bachir, Sotax SCRI, Mostapha El Hammouchi, Boughaz SPRL, Sahbaz SPRL, Jamal El Jelali, Mohamed Chakir Ben Kadour, Taxis Chalkis SCRL, Mohammed Gheris, Les délices de Fes SPRL, Abderrahmane Belyazid, E.A.R. SCS, Sotrans SPRL, B.M.A. SCS, Taxis Amri et Cie SCS, Aramak SCS, Rachid El Amrani, Mourad Bakkour, Mohamed Agharbiou, Omar Amri, Jmili Zouhair, Mustapha Ben Abderrahman, Mohamed Zahyani, Miltotax SPRL, Lextra SA, Ismail El Amrani, Farid Benazzouz, Imad Zoufri, Abdel-Ilah Bokhamy, Ismail Al Bouhali, Bahri Messaoud & Cie SCS, Mostafa Bouzid, BKN Star SPRL, M.V.S. SPRL, A.B.M.B. SCS, Imatrans SPRL, Reda Bouyaknouden, Ayoub Tahri, Moulay Adil El Khatir, Redouan El Abboudi, Mohamed El Abboudi, Bilal El Abboudi, Sofian El Abboudi, Karim Bensbih, Hadel Bensbih, Mimoun Mallouk, Abdellah El Ghaffouli, Said El Aazzoui

**Operative part of the judgment**

*Article 96(1) TFEU must be interpreted as not applying to restrictions, such as those at issue in the main proceedings, imposed on taxi operators.*

([1]) OJ C 260, 18.7.2016.

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## Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 28 November 2016 — Giovanna Judith Kerr v Fazenda Pública

**(Case C-615/16)**

(2017/C 151/19)

*Language of the case: Portuguese*

**Referring court**

Supremo Tribunal Administrativo

**Parties to the main proceedings**

*Applicant:* Giovanna Judith Kerr

*Defendant:* Fazenda Pública

**Question referred**

[Must] the provision in Articles 135(1)(f) and 15(2) of Council Directive 2006/112/EC ([1]) … be interpreted as referring only to parties to contracts for the marketing of rights to use properties, or [may] it also be interpreted as referring equally to the activity carried on by the applicant, consisting in attracting clients and promoting services, so as to ensure that the business marketing those services completes the relevant sale, in accordance with instructions laid down in advance and limits on discounts and promotional gifts?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax OJ 2006 L 347, p. 1.

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## Appeal brought on 19 January 2017 by Birkenstock Sales GmbH against the judgment of the General Court (Fifth Chamber) delivered on 9 November 2016 in Case T-579/14 *Birkenstock Sales GmbH* v *European Union Intellectual Property Office (EUIPO)*

**(Case C-26/17 P)**

(2017/C 151/20)

*Language of the case: German*

**Parties**

*Appellant:* Birkenstock Sales GmbH (represented by: C. Menebröcker, Rechtsanwalt, and V. Töbelmann, Rechtsanwältin)

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

**Form of order sought**

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 9 November 2016 (Case T-579/14), in so far as it dismissed the appellant's action;

— grant the claims for registration of the goods in respect of which the appellant's action was dismissed at first instance before the General Court of the European Union;

— order EUIPO to pay the costs of the proceedings before the Court of Justice, the General Court and the Board of Appeal.

**Grounds of appeal and main arguments**

1. The appellant asks the Court to set aside the judgment of the General Court of 9 November 2016 in Case T-579/14 concerning IR mark No 1132742 in so far as it dismissed the appellant's action, and to grant the claims relating to the goods in respect of which the appellant's action was dismissed at first instance before the General Court.

2. The appellant first alleges infringement of Article 7(1)(b) of the European Trade Mark Regulation ([1]) on the ground that the General Court erred in applying the principles governing three-dimensional marks to the IR mark at issue. The appellant also claims that the General Court, in its assessment of the IR mark according to the principles governing three-dimensional marks, did not provide a definition of the 'standards and usual practices of the sector' in respect of the goods at issue, and finally that the General Court applied stricter criteria to the assessment of the overall impression of the IR mark than those provided for in Article 7(1)(b) of the Trade Mark Regulation.

3. The appellant further claims that the judgment of the General Court is contradictory in so far as it was there established that the distinctive character of a sign must be established on the basis of the sign itself, although the General Court considered questions of use in its assessment and, on the issue of whether a sign may be deemed to be used at the same time in a two-dimensional and in a three-dimensional way, referred to one of its own previous judgments.

4. Furthermore, the appellant alleges a distortion of facts, in so far as it was stated in the judgment under appeal that EUIPO was not required to substantiate its view that the IR mark did not depart significantly from the forms of use normal in the sector, given that the Board of Appeal based its arguments on facts shown by practical experience generally acquired in the marketing of the goods at issue, likely to be known by anyone.

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

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**Appeal brought on 23 January 2017 by Apcoa Parking Holdings GmbH against the order of the General Court (Seventh Chamber) made on 8 November 2016 in Joined Cases T-268/15 and T-272/15, Apcoa Parking Holdings GmbH v European Union Intellectual Property Office (EUIPO)**

**(Case C-32/17 P)**

(2017/C 151/21)

*Language of the case: German*

**Parties**

*Appellant:* Apcoa Parking Holdings GmbH (represented by: A. Lohmann, Rechtsanwalt)

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