

6. Does the term 'Community rules' in Article 3(4) of Directive 2005/29/EC relate solely to the provisions contained in European regulations and directives and to the provisions directly transposing them, or does it also encompass the legislative and regulatory provisions implementing principles of EU law?
7. Do the speciality principle, established in recital 10 in the preamble and Article 3(4) of Directive 2005/29/EC and Articles 20 and 21 of Directive 2002/22/EC, Articles 3 and 4 of Directive 2002/21/EC<sup>(4)</sup> as well, preclude an interpretation of the corresponding national transposing provisions to the effect that, whenever, in a regulated sector containing sectoral 'consumer' rules, in which the sectoral authority is empowered to regulate and impose penalties, conduct that could be covered by the term 'aggressive practice' within the meaning of Articles 8 and 9 of Directive 2005/29/EC, or the term 'in all circumstances considered aggressive' within the meaning of Annex I of Directive 2005/29/EC, is identified, the general rules on improper practices must always apply, even when there are sectoral rules adopted to protect consumers and based on provisions of EU law, that fully regulate those same 'aggressive practices' and practices 'in all circumstances considered aggressive' or, at any rate, those same 'improper practices'?

<sup>(1)</sup> N.B. The progressive numbering of the questions used here differs from that used in the order for reference, in which there were two groups of questions not numbered consecutively.

<sup>(2)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance) (OJ 2005 L 149, p. 22).

<sup>(3)</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

<sup>(4)</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

**Appeal brought on 30 March 2017 by the Republic of Poland against the judgment of the General Court (Ninth Chamber) delivered on 19 January 2017 in Case T-701/15, *Stock Polska v EUIPO — Lass & Steffen* (LUBELSKA)**

**(Case C-162/17 P)**

(2017/C 239/28)

*Language of the case: Polish*

### Parties

*Appellant:* Republic of Poland (represented by: B. Majczyna)

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

### Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court of the European Union (Ninth Chamber) of 19 January 2017 in Case T-701/15, *Stock Polska v EUIPO — Lass & Steffen* (LUBELSKA), in its entirety;
- order that the case be referred back to the General Court for judgment;
- order each of the parties to bear their own costs.

### Grounds of appeal and main arguments

The Republic of Poland seeks the setting aside of the judgment of the General Court of the European Union (Ninth Chamber) of 19 January 2017 in Case T-701/15, *Stock Polska v EUIPO — Lass & Steffen* (LUBELSKA), EU:T:2017:16, and the referring of the case back to that court for judgment.

In the judgment under appeal, the General Court dismissed the action brought by *Stock Polska sp. z o.o.*, established in Lublin, against the decision of the Board of Appeal of the then Office for Harmonisation in the Internal Market (OHIM; now, following a change of name, known as the European Union Intellectual Property Office (EUIPO)) of 24 September 2015 in Case R 1788/2014-5 upholding the decision of EUIPO of 14 May 2014 rejecting the EU trade mark application submitted by *Stock Polska sp. z o.o.*

The judgment of the General Court and the decision of EUIPO preceding that judgment refuse to register the trade mark 'Lubelska' (the sign) on account of its similarity to the trade mark 'Lubeca', a similarity giving rise to a likelihood of confusion on the part of the public in Germany (the territory in which the earlier trade mark 'Lubeca' is protected) as regards the origin of the goods designated by that mark within the meaning of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark.

The Republic of Poland invokes the following grounds against the judgment under appeal:

1. Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark <sup>(1)</sup> through failure to carry out a global assessment of the existence of a likelihood of confusion based on an overall impression and taking into account the signs' dominant and distinctive elements, on account of, inter alia, the unjustified restricting of the assessment of the similarity between the sign and the earlier trade mark to a single element of the sign (the word element).

The General Court erred in accepting that it is possible to restrict the assessment of the similarity between two trade marks to an assessment consisting in examining only one of the elements forming the composite trade mark (the word element) and comparing that element with the other trade mark, eliminating the graphical element from that assessment without first establishing that the word element constitutes the dominant element, while the graphical element is meaningless. The General Court established only that the graphical element is weakly distinctive, failing to take into account that the fact that a particular element of a sign is weakly distinctive does not mean that that element may not be the dominant element.

2. Infringement of Article 8(1)(b) of Regulation No 207/2009 and infringement of the principles of equal treatment, sound administration and legal certainty through failure to take into consideration the fact that EUIPO had neglected to follow its previous decision-making practice as set out in the EUIPO Guidelines and, consequently, through acceptance of a decision running counter to that practice.

The General Court disregarded the fact that EUIPO had departed from its previous decision-making practice as set out in the Guidelines in relation to the application of Article 8(1)(b) of Regulation No 207/2009 and that there were no special circumstances justifying a departure from that practice.

3. Infringement of Article 8(1)(b) of Regulation No 207/2009 through carrying out an assessment of the existence of a likelihood of confusion by accepting as true so-called facts which do not tally with common knowledge and by disregarding widely-known, relevant facts, which as a result has led to a misrepresentation of the facts and evidence, namely:

- (a) accepting as a widely-known fact that the average German consumer does not know the meaning of the name Lubeca, disregarding the fact that a person's degree of familiarity with Latin names of cities (such as 'Lubeca' for Lübeck) has no bearing on that person's degree of familiarity with Latin names as such and that consumers of alcoholic beverages attach great significance to the geographical origin of those beverages,

- (b) accepting as a widely-known fact that the graphical element in the form of a crown is widely used on labels of alcoholic beverages.

4. Infringement of the obligation to state reasons when applying Article 8(1)(b) of Regulation No 207/2009 through:

- (a) failure to specify which of the elements of the sign was recognised by the General Court as being the dominant element,

- (b) failure to specify the grounds for the assertion that the average German consumer is not familiar with the meaning of the word 'Lubeca'.

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<sup>(1)</sup> OJ 2009 L 78, p. 1.