

Grounds of appeal and main arguments

The appellant's appeal is directed against the judgment of the General Court of 9 February 2017 in Case T-16/16, which concerns the requirements governing a representation of a design for the purposes of attribution of a date of filing, namely with regard to the applications for registration of designs No 002683615-0001 and No 002683615-0002 (beakers).

The General Court judgment under appeal infringes the provisions of Article 46(2) and (3) of Regulation No 6/2002, in conjunction with Articles 36 and 38 of that regulation, insofar as, according to the General Court, it follows from the meaning and purpose of those provisions that applications for registration are not to be treated as applications for registration of Community designs if, in the Office's view, there is uncertainty or ambiguity in respect of the subject matter of the design applied for. It must, however, be concluded from the significance of the date of filing for the design applicant that the representation of the design cannot be subject to stringent requirements and that Article 36(1)(c) merely requires the representation of the design to be physically suitable for reproduction in order for the date of filing to be attributed under Article 38 of Regulation No 6/2002.

Nothing else — contrary to the General Court's view — follows from Article 4(1)(e) of Regulation No 2245/2002, in conjunction with Article 10(1)(c) and 10(2) thereof. Insofar as it is stated therein that the reproduction of the design must be of a quality allowing all the details for which protection is sought to be distinguished clearly, that provision also means only the representation's physical suitability for reproduction. This is so particularly in view of the fact that the applicant alone determines the subject matter of the application, that is to say, in respect of what it is applying for protection. Lastly, the final determination of the extent of protection for a design is a matter, in any event, solely and exclusively for a court dealing with infringement proceedings.

Insofar as the registration of the design with a view to its reproduction might lead to legal uncertainty, registration may be denied, but not the attribution of a date of filing, which is of major importance for the applicant by reason of the provisions on the effect of a first filing giving rise to a right of priority under Article 4(A) of the Paris Convention for the Protection of Industrial Property.

In this context, the General Court failed to have regard for the unequivocal wording of the differentiated provisions of Article 46(2) and Article 46(3). An application for registration is to be considered, under Article 46(2) of Regulation No 6/2002, not to be an application for registration of a Community design only if the deficiencies in the application relate to the requirements of Article 36(1) of that regulation. However, Article 36(1) requires, with regard to the representation of the design, only that it must be suitable for reproduction. Any further irregularities, in particular those arising from the application of Regulation No 2245/2002, could, under Article 46(3) of Regulation No 6/2002, lead only to a rejection of the application for registration, after prior attribution of a date of filing. This is evident from the reference in Article 46(3) to Article 45(2)(a), in conjunction with Article 36(5), of Regulation No 6/2002.

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 15 May 2017 — Ramazan Dündar and Others v Air Berlin plc & Co. Luftverkehrs KG

(Case C-253/17)

(2017/C 300/16)

Language of the case: Germany

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicants: Ramazan Dündar, Carolin Wenzel, Antonia Genovese, Jan-Maximilian Mügge

Defendant: Air Berlin plc & Co. Luftverkehrs KG

By order of 20 June 2017, the President of the Court of Justice of the European Union removed the case from the Court's Register.
