

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 15 May 2017 by Ccc Event Management GmbH against the order of the General Court (Fifth Chamber) made on 14 March 2017 in Case T-889/16, Ccc Event Management GmbH v Court of Justice of the European Union

(Case C-261/17 P)

(2017/C 330/02)

Language of the case: German

Parties

Appellant: Ccc Event Management GmbH (represented by: A. Schuster, Rechtsanwalt)

Other party to the proceedings: Court of Justice of the European Union

By order of 13 July 2017 the Court of Justice of the European Union (Tenth Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 31 May 2017 by Cryo-Save AG against the judgment of the General Court (Sixth Chamber) delivered on 23 March 2017 in Case T-239/15, Cryo-Save AG v European Union Intellectual Property Office

(Case C-327/17 P)

(2017/C 330/03)

Language of the case: German

Parties

Appellant: Cryo-Save AG (represented by: C. Onken, Rechtsanwältin)

Other parties to the proceedings: European Union Intellectual Property Office, MedSkin Solutions Dr. Suwelack AG

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court of 23 March 2017 in Case T-239/15;
- order the defendant at first instance to pay the costs.

Grounds of appeal and main arguments

The appellant puts forward one ground of appeal alleging an infringement of Article 64(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, ⁽¹⁾ of Rule 50(1) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark, ⁽²⁾ in conjunction with Article 56(2) of Regulation No 207/2009, Rules 37 and 39 of Regulation No 2868/95 and Article 76(1) of Regulation No 207/2009. The appellant argues that the infringement consists of the General Court's decision to find that the first plea in law of the applicant, who is the appellant in the present case, was inadmissible.

By its first plea in law the applicant and appellant contested the admissibility of the application for revocation of its EU trade mark. In support thereof, it asserted that, contrary to Article 56(2) of Regulation No 207/2009 and Rule 37(b)(iv) of Regulation No 2868/95, that application was insufficiently reasoned.

The General Court decided that the first plea in law put forward by the applicant and appellant was inadmissible, as the latter had failed to allege any infringement of the formal requirements of Article 56(2) of Regulation No 207/2009, in conjunction with Rule 37(b)(iv) of Regulation No 2868/95, the examination of the complaint was limited to examining whether there had been genuine use, and the Board of Appeal was therefore not required to consider the propriety of the application for revocation. The General Court took the view that any assessment by it of the first plea in law would amount to an extension of the factual and legal context, something which was a matter for the Board of Appeal.

The applicant and appellant counters this by submitting that the admissibility of an application for revocation constitutes a precondition for a substantive decision, which must be assessed by the defendant at every stage of the proceedings of its own motion (Article 76([1]), first sentence, of Regulation No 207/2009, Rule 39(1) and Rule 40(1), first sentence, of Regulation No 2868/95, Article 64(1) of Regulation No 207/2009, Rule 50(1) of Regulation No 2868/95). It is therefore inconsequential whether or not the applicant and appellant had specifically raised the issue of the admissibility of the application for revocation before the Board of Appeal.

Furthermore, the appellant maintains that the defendant's Cancellation Division assessed the admissibility of the application for revocation of its own motion and expressly stated that the requirements of Article 56(2) of Regulation No 207/2009 and of Rule 37 of Regulation No 2868/95 had been fulfilled. The appellant submits that the principle of continuity of functions, as recognised in the case-law of the General Court, requires a full review of the decision of the Cancellation Division by the Board of Appeal, including assessments as to the admissibility of applications for revocation. In support of its view, the appellant refers to, inter alia, the case-law of the General Court as expressed in the judgments of 23 September 2003, *KLEENCARE*, T-308/01, paragraphs 24 to 26, 28, 29 and 32, ⁽¹⁾ and of 1 February 2005, *HOOLIGAN*, T-57/03, paragraphs 22 and 25. ⁽⁴⁾

Lastly, the applicant and appellant indubitably challenged the admissibility of the application for revocation, albeit in different terms, both in the proceedings before the Cancellation Division and in those before the Board of Appeal.

On the basis of all three aforementioned grounds the question as to the admissibility of the application for revocation has always been part of the factual and legal context of the proceedings before the Board of Appeal. The applicant claims that the assessment of the admissibility of the application for revocation by the General Court does not go beyond such an analysis. The applicant maintains that, to that extent, a complaint of inadmissibility of an application for revocation differs from the submission of new grounds for revocation or invalidity and also differs from a belated request for evidence of genuine use of an earlier mark.

⁽¹⁾ OJ 2009 L 78, p. 1.

⁽²⁾ OJ 1995 L 303, p. 1.

⁽³⁾ ECLI:EU:T:2003:241.

⁽⁴⁾ ECLI:EU:T:2005:29.

**Request for a preliminary ruling from the Tribunale di Torino (Italy) lodged on 9 June 2017 — IJDF
Italy Srl v Violeta Fernando Dionisio, Alex Del Rosario Fernando**

(Case C-344/17)

(2017/C 330/04)

Language of the case: Italian

Referring court

Tribunale di Torino

Parties to the main proceedings

Applicant: IJDF Italy Srl

Defendants: Violeta Fernando Dionisio, Alex Del Rosario Fernando