



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

2 April 2020*

[Text rectified by order of 15 June 2020]

(Reference for a preliminary ruling — EU trade mark — Regulation (EC) No 207/2009 — Article 9 — Regulation (EU) 2017/1001 — Article 9 — Rights conferred by a trade mark — Use — Stocking of goods for the purposes of offering them or putting them on the market — Storage with a view to dispatching goods sold in an online marketplace which infringe trade mark rights)

In Case C-567/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 26 July 2018, received at the Court on 7 September 2018, in the proceedings

Coty Germany GmbH

v

Amazon Services Europe Sàrl,

Amazon Europe Core Sàrl,

Amazon FC Graben GmbH,

Amazon EU Sàrl,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis, E. Juhász, M. Ilešič (Rapporteur) and C. Lycourgos, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 19 September 2019,

after considering the observations submitted on behalf of:

- [As rectified by order of 15 June 2020] Coty Germany GmbH, by M. Fiebig, B. Weichhaus and A. Lubberger, Rechtsanwälte,

* Language of the case: German.

- Amazon Services Europe Sàrl and Amazon FC Graben GmbH, by V. von Bomhard, C. Elkemann and A. Lambrecht, Rechtsanwälte,
 - [As rectified by order of 15 June 2020] the German Government, by J. Möller, M. Hellmann and U. Bartl, acting as Agents,
 - the European Commission, by G. Braun, É. Gippini Fournier and S.L. Kaléda, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 28 November 2019,
- gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 9(2)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark (OJ 2009 L 78, p. 1), in the version prior to its amendment by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 (OJ 2015 L 341, p. 21), and of Article 9(3)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).
- 2 The request has been made in proceedings between Coty Germany GmbH ('Coty'), on the one hand, and Amazon Services Europe Sàrl, Amazon Europe Core Sàrl, Amazon FC Graben GmbH and Amazon EU Sàrl, on the other concerning the sale, in a marketplace of the website www.amazon.de, of bottles of perfume in respect of which the rights conferred by the trade mark have not been exhausted, by a third-party seller who did not have authorisation from Coty to do so.

Legal context

Regulation No 207/2009

- 3 Article 9 of Regulation No 207/2009, entitled 'Rights conferred by [an EU] trade mark', in the version prior to its amendment by Regulation 2015/2424, provided, in paragraphs 1 and 2 thereof:

'1. [An EU] trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

 - (a) any sign which is identical with the [EU] trade mark in relation to goods or services which are identical with those for which the [EU] trade mark is registered;
 - (b) any sign where, because of its identity with, or similarity to, the [EU] trade mark and the identity or similarity of the goods or services covered by the [EU] trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;
 - (c) any sign which is identical with, or similar to, the [EU] trade mark in relation to goods or services which are not similar to those for which the [EU] trade mark is registered, where the latter has a reputation in the [European Union] and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the [EU] trade mark.

2. The following, inter alia, may be prohibited under paragraph 1:

...

(b) offering the goods, putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder;

...'

4 Regulation No 207/2009, as amended by Regulation 2015/2424, was repealed and replaced, with effect from 1 October 2017, by Regulation 2017/1001.

Regulation 2017/1001

5 Article 9 of Regulation 2017/1001 reads as follows:

'1. The registration of an EU trade mark shall confer on the proprietor exclusive rights therein.

2. Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the EU trade mark, the proprietor of that EU trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where:

(a) the sign is identical with the EU trade mark and is used in relation to goods or services which are identical with those for which the EU trade mark is registered;

(b) the sign is identical with, or similar to, the EU trade mark and is used in relation to goods or services which are identical with, or similar to, the goods or services for which the EU trade mark is registered, if there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

(c) the sign is identical with, or similar to, the EU trade mark irrespective of whether it is used in relation to goods or services which are identical with, similar to or not similar to those for which the EU trade mark is registered, where the latter has a reputation in the Union and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the EU trade mark.

3. The following, in particular, may be prohibited under paragraph 2:

...

(b) offering the goods, putting them on the market, or stocking them for those purposes under the sign, or offering or supplying services thereunder;

...'

Directive 2000/31/EC

- 6 Article 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1), entitled 'Hosting', provides, in paragraph 1 thereof:

'Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

- (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.'

Directive 2004/48/EC

- 7 Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, corrigendum OJ 2004 L 195, p. 16), entitled 'Injunctions', provides, in the first sentence thereof:

'Member States shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 8 Coty, a distributor of perfumes, holds a licence for the EU trade mark DAVIDOFF registered under No 876 874 ('the mark at issue'), which enjoys protection for 'perfumes, essential oils, cosmetics'.
- 9 Amazon Services Europe enables third-party sellers to place offers for sale in respect of their goods in the 'Amazon-Marketplace' section of the website www.amazon.de. In the event of sale, contracts concerning those goods are concluded between the third-party sellers and the purchasers. Those third-party sellers may also avail themselves of the 'Fulfilment by Amazon' scheme, under which goods are stored by Amazon group companies, including Amazon FC Graben, which operates a warehouse. Those goods are dispatched by external service providers.
- 10 On 8 May 2014 one of Coty's test purchasers ordered on the website www.amazon.de a bottle of 'Davidoff Hot Water EdT 60 ml' perfume that was offered for sale by a third-party seller ('the seller') and dispatched by the Amazon group under that scheme. After Coty sent a letter of formal notice to the seller on the ground that the rights conferred by the mark at issue were not exhausted in respect of the goods consigned by the seller to Amazon FC Graben under that scheme, those goods not having been put on the market in the European Union under that trade mark by the proprietor or with its consent, the seller signed a cease-and-desist declaration, coupled with a penalty clause.
- 11 By letter of 2 June 2014, Coty requested Amazon Services Europe to return all the bottles of perfume bearing the mark at issue stocked on behalf of the seller. Amazon Services Europe sent Coty a package containing 30 bottles of perfume. After another company belonging to the Amazon group informed Coty that 11 out of the 30 bottles sent originated from another seller's stock, Coty requested that

Amazon Services Europe disclose the name and address of that other seller, as the rights conferred on 29 out of the 30 bottles by the mark at issue had not been exhausted. Amazon Services Europe replied that it was not in a position to accede to that request.

- 12 Taking the view that Amazon Services Europe's conduct, on the one hand, and that of Amazon FC Graben, on the other, infringed its rights in the mark at issue, Coty requested, in essence, that those two companies be ordered, subject to penalties, to desist, in the course of trade, from stocking or dispatching 'Davidoff Hot Water' brand perfumes in Germany, or from causing them to be stocked or dispatched, if those goods were not put on the Union market with Coty's consent. It requested, in the alternative, that the same order be made against those companies in relation to 'Davidoff Hot Water EdT 60 ml' brand perfumes and, in the further alternative, that the same order be made against them in relation to 'Davidoff Hot Water EdT 60 ml' brand perfumes which have been stored on behalf of the seller or which cannot be attributed to another seller.
- 13 The Landgericht (Regional Court, Germany) dismissed the action brought by Coty. The appeal brought by Coty was dismissed, with the court of appeal holding, *inter alia*, that Amazon Services Europe had neither stocked nor dispatched the goods concerned and that Amazon FC Graben had kept those goods on behalf of the seller and other third-party sellers.
- 14 Coty brought an appeal on a point of law (*Revision*) before the referring court. Only Amazon Services Europe and Amazon FC Graben are respondents before that court.
- 15 The referring court states that whether that appeal is successful, in so far as Coty disputes the court of appeal's finding that Amazon FC Graben is not liable as a perpetrator of an infringement of trade mark rights, depends on the interpretation to be given to Article 9(2)(b) of Regulation No 207/2009 and Article 9(3)(b) of Regulation 2017/1001.
- 16 In particular, it emphasises that whether the appeal on a point of law is successful depends on whether those provisions are to be interpreted as meaning that a person who, on behalf of a third party, stores goods which infringe trade mark rights, without having knowledge of that infringement, stocks those goods in order to offer them or put them on the market for the purposes of those provisions, even if it is only the third party who intends to offer those goods or put them on the market.
- 17 The referring court also states that, since Coty bases one of its claims on the risk of a repeat infringement, its action is well founded only if the conduct of the Amazon group companies in question is established to be unlawful both at the material time in the main proceedings and when the decision on the appeal on a point of law is issued.
- 18 In those circumstances, the Bundesgerichtshof (Federal Court of Justice, Germany) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does a person who, on behalf of a third party, stores goods which infringe trade mark rights, without having knowledge of that infringement, stock those goods for the purpose of offering them or putting them on the market, if it is not that person himself but rather the third party alone which intends to offer the goods or put them on the market?'

Consideration of the question referred

Admissibility

- 19 Coty argues, first, that the question referred for a preliminary ruling, as submitted by the referring court, essentially covers a warehouse-keeper who does not provide any assistance in the offering for sale, sale or putting on the market of the goods stored in its warehouse. However, Amazon FC Graben cannot be thus characterised, in the light of the services offered by other Amazon group companies in connection with putting the goods concerned on the market, so that it is possible that the question referred for a preliminary ruling concerns a hypothetical problem or that that question does not bear sufficient relation to the actual facts of the main action or its object.
- 20 Secondly, Coty submits that the description of the respondents in the main proceedings set out in the order for reference does not sufficiently reflect the role played by Amazon Services Europe and Amazon FC Graben in putting the goods concerned on the market. It claims, in that context, that, in the notice for sale and when the contract of sale is performed, those companies entirely replace the seller. In addition, by order of Amazon Services Europe and Amazon EU, Amazon Europe Core continuously promotes the goods concerned on the website www.amazon.de by means of advertisements on the Google search engine referring to offers made both by Amazon EU in its own name and by third parties and managed by Amazon Services Europe. Thus, taken as a whole, the activities of the respondents in the main proceedings go far beyond the role played by eBay in the case that gave rise to the judgment of 12 July 2011, *L'Oréal and Others* (C-324/09, EU:C:2011:474).
- 21 In that regard, it should be borne in mind that the Court, when answering questions referred for a preliminary ruling, must take account, under the division of jurisdiction between the Courts of the European Union and the national courts, of the factual and legislative context of the questions as described in the order for reference (judgments of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 24, and of 14 November 2019, *Spedidam*, C-484/18, EU:C:2019:970, paragraph 29 and the case-law cited).
- 22 Since the national court alone has jurisdiction to find and assess the facts in the case before it, the Court must in principle confine its examination to the matters which the court or tribunal making the reference has decided to submit to it and thus proceed on the basis of the situation which that court or tribunal considers to be established, and cannot be bound by suppositions raised by one of the parties to the main proceedings (judgment of 8 June 2016, *Hünnebeck*, C-479/14, EU:C:2016:412, paragraph 36 and the case-law cited).
- 23 It is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgment of 19 December 2019, *Dobersberger*, C-16/18, EU:C:2019:1110, paragraph 18 and the case-law cited).
- 24 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 19 December 2019, *Dobersberger*, C-16/18, EU:C:2019:1110, paragraph 19 and the case-law cited).
- 25 However, that is not the situation in the present case.

- 26 First, as is clear from the order for reference, and as noted in paragraph 15 above, whether the appeal on a point of law is successful depends, according to the referring court, on the interpretation to be given to Article 9(2)(b) of Regulation No 207/2009 and Article 9(3)(b) of Regulation 2017/1001, which is sought by that court in order to establish Amazon FC Graben's potential liability for the infringement of Coty's trade mark rights.
- 27 Secondly, the Court has before it the factual and legal material necessary to give a useful answer to the question submitted to it. It is clear from the order for reference, first, that Amazon Services Europe enables third-party sellers to place offers for sale in respect of their goods in the 'Amazon-Marketplace' section of the website www.amazon.de and, second, that Amazon FC Graben operates a warehouse in which the goods concerned were stored.
- 28 Moreover, as regards the lack of description of Amazon EU and Amazon Europe Core in the order for reference, it must be pointed out that the potential liability of those companies is not the subject of the appeal on a point of law pending before the referring court or, by extension, of the request for a preliminary ruling.
- 29 It follows that the question referred for a preliminary ruling is admissible.

Substance

- 30 By its question, the referring court asks, in essence, whether Article 9(2)(b) of Regulation No 207/2009 and Article 9(3)(b) of Regulation 2017/1001 must be interpreted as meaning that a person who, on behalf of a third party, stores goods which infringe trade mark rights, without being aware of that infringement, must be regarded as stocking those goods in order to offer them or put them on the market for the purposes of those provisions, if that person does not itself pursue those aims.
- 31 It should be borne in mind, as a preliminary point, that, according to Article 9(1) of Regulation No 207/2009, the substance of which is reproduced in Article 9(1) and (2) of Regulation 2017/1001, an EU trade mark confers on the proprietor the exclusive right to prevent all third parties from using in the course of trade any sign which is identical to that mark in relation to goods or services which are identical to those for which the mark is registered, or any sign where, because of its identity with, or similarity to, the EU trade mark and the identity or similarity of the goods or services covered by that mark and the sign, there exists a likelihood of confusion on the part of the public, or any sign which is identical or similar to the EU trade mark in relation to goods or services which are not similar to those for which that mark is registered, where the latter has a reputation in the European Union and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of that mark.
- 32 Article 9(2) of Regulation No 207/2009, the substance of which is reproduced in Article 9(3) of Regulation 2017/1001, sets out a non-exhaustive list of the types of use which may be prohibited by a trade mark proprietor under Article 9(1) of Regulation No 207/2009 and Article 9(1) of Regulation 2017/1001 (see, to that effect, judgment of 23 March 2010, *Google France and Google*, C-236/08 to C-238/08, EU:C:2010:159, paragraph 65).
- 33 Those types of use include, in Article 9(2)(b) of Regulation No 207/2009, the substance of which is reproduced in Article 9(3)(b) of Regulation 2017/1001, offering the goods, putting them on the market or stocking them for those purposes.
- 34 In the present case, it is apparent from the order for reference, first, that the respondents in the main proceedings merely stored the goods concerned, without themselves offering them for sale or putting them on the market and, secondly, that they did not intend to offer those goods for sale or put them on the market either.

- 35 It must therefore be determined whether such a storage operation may be regarded as ‘using’ the trade mark for the purposes of Article 9(1) of Regulation No 207/2009 and Article 9(1) and (2) of Regulation 2017/1001 and, in particular, as ‘stocking’ those goods in order to offer them or put them on the market for the purposes of Article 9(2)(b) of Regulation No 207/2009, the substance of which is reproduced in Article 9(3)(b) of Regulation 2017/1001.
- 36 In that regard, it should be borne in mind, in the first place, that neither Regulation No 207/2009 nor Regulation 2017/1001 defines the concept of ‘using’ referred to in Article 9 of those regulations.
- 37 The Court has, however, already had occasion to point out that, according to its ordinary meaning, the expression ‘using’ involves active behaviour and direct or indirect control of the act constituting the use. In that regard, it has noted that Article 9(2) of Regulation No 207/2009, the substance of which is reproduced in Article 9(3) of Regulation 2017/1001, which lists in a non-exhaustive manner the types of use which the trade mark proprietor may prohibit, refers exclusively to active behaviour on the part of the third party (see, to that effect, judgments of 3 March 2016, *Daimler*, C-179/15, EU:C:2016:134, paragraphs 39 and 40, and of 25 July 2018, *Mitsubishi Shoji Kaisha and Mitsubishi Caterpillar Forklift Europe*, C-129/17, EU:C:2018:594, paragraph 38).
- 38 The Court has also noted that those provisions are intended to provide a trade mark proprietor with a legal instrument allowing him to prohibit, and thus to prevent, any use of his trade mark by a third party without his consent. However, only a third party who has direct or indirect control of the act constituting the use is effectively able to stop that use and therefore comply with that prohibition (see, to that effect, judgment of 3 March 2016, *Daimler*, C-179/15, EU:C:2016:134, paragraph 41).
- 39 The Court has also repeatedly held that the use, by a third party, of a sign identical or similar to the proprietor’s trade mark implies, at the very least, that that third party uses the sign in its own commercial communication. A person may thus allow its clients to use signs which are identical or similar to trade marks without itself using those signs (see, to that effect, judgment of 23 March 2010, *Google France and Google*, C-236/08 to C-238/08, EU:C:2010:159, paragraph 56).
- 40 Thus, the Court has held, as regards the operation of an e-commerce platform, that the use of signs identical or similar to trade marks in offers for sale displayed in an online marketplace is made by the sellers who are customers of the operator of that marketplace and not by that operator itself (see, to that effect, judgment of 12 July 2011, *L’Oréal and Others*, C-324/09, EU:C:2011:474, paragraph 103).
- 41 It has also noted, as regards an undertaking whose main activity is filling cans with drinks produced by it or by third parties, that a service provider who merely fills, under an order from and on the instructions of a third party, cans already bearing signs similar to trade marks and therefore merely executes a technical part of the production process of the final product without having any interest in the external presentation of those cans and in particular in the signs thereon, is not itself ‘using’ those signs, but is only creating the technical conditions necessary for the third party to use them (see, to that effect, judgment of 15 December 2011, *Frisdranken Industrie Winters*, C-119/10, EU:C:2011:837, paragraph 30).
- 42 Similarly, the Court has held that, although an economic operator who imports or sends to a warehouse-keeper, for the purposes of their being put on the market, goods bearing a trade mark of which it is not the proprietor may be regarded as ‘using’ a sign identical to that trade mark, that is not necessarily true of the warehouse-keeper who provides a storage service in relation to goods bearing another person’s trade mark (see, to that effect, judgment of 16 July 2015, *TOP Logistics and Others*, C-379/14, EU:C:2015:497, paragraphs 42 and 45).

- 43 The fact of creating the technical conditions necessary for the use of a sign and being paid for that service does not mean that the party offering the service itself uses the sign (see, to that effect, judgments of 23 March 2010, *Google France and Google*, C-236/08 to C-238/08, EU:C:2010:159, paragraph 57, and of 15 December 2011, *Frisdranken Industrie Winters*, C-119/10, EU:C:2011:837, paragraph 29).
- 44 In the second place, it is apparent from the wording of Article 9(2)(b) of Regulation No 207/2009, the substance of which is reproduced in Article 9(3)(b) of Regulation 2017/1001, that that provision relates specifically to the offering of goods, their being put on the market, their being stocked ‘for those purposes’ or the supply of services under the sign concerned.
- 45 It follows that, in order for the storage of goods bearing signs identical, or similar to trade marks to be classified as ‘using’ those signs, it is also necessary, as observed, in essence, by the Advocate General in point 67 of his Opinion, for the economic operator providing the storage itself to pursue the aim referred to by those provisions, which is offering the goods or putting them on the market.
- 46 Failing that, it cannot be concluded that the act constituting the use of the trade mark is carried out by that person, or that the sign is used in that person’s own commercial communication.
- 47 In the present case, as regards the respondents in the main proceedings, as noted in paragraph 34 above, the referring court states unequivocally that they have not themselves offered the goods concerned for sale or put them on the market, that court stating, moreover, in the wording of its question, that it is the third party alone who intends to offer the goods or put them on the market. It follows that the respondents do not themselves use the sign in their own commercial communication.
- 48 That conclusion is, however, without prejudice to the possibility of considering that those parties themselves use the sign in connection with bottles of perfume which they stock not on behalf of third-party sellers but on their own behalf or which, if they were unable to identify the third-party seller, would be offered or put on the market by those parties themselves.
- 49 Lastly, notwithstanding the considerations referred to in paragraph 47 above, it should be borne in mind that it is apparent from settled case-law that, where an economic operator has enabled another operator to make use of the trade mark, its role must, as necessary, be examined from the point of view of rules of law other than Article 9 of Regulation No 207/2009 or Article 9 of Regulation 2017/1001 (see, to that effect, judgments of 23 March 2010, *Google France and Google*, C-236/08 to C-238/08, EU:C:2010:159, paragraph 57, and of 15 December 2011, *Frisdranken Industrie Winters*, C-119/10, EU:C:2011:837, paragraph 35), such as Article 14(1) of Directive 2000/31 or the first sentence of Article 11 of Directive 2004/48.
- 50 In that regard, Coty asks the Court, in the event that the answer to the question submitted by the referring court is in the negative, to rule on whether the activity of the operator of an online marketplace in circumstances such as those in the main proceedings falls within the scope of Article 14(1) of Directive 2000/31 and, if not, whether such an operator must be regarded as an ‘infringer’ as referred to in the first sentence of Article 11 of Directive 2004/48.
- 51 It should, however, be borne in mind that, according to settled case-law, it is not necessary to examine questions submitted to the Court by the parties to the main proceedings other than those that were the subject of the national court’s order for reference (judgment of 3 September 2015, *A2A*, C-89/14, EU:C:2015:537, paragraph 44 and the case-law cited).
- 52 It is common ground that, in its request for a preliminary ruling, the referring court did not raise that question, and there is therefore no need to answer it.

- 53 In the light of the foregoing considerations, the answer to the question referred is that Article 9(2)(b) of Regulation No 207/2009 and Article 9(3)(b) of Regulation 2017/1001 must be interpreted as meaning that a person who, on behalf of a third party, stores goods which infringe trade mark rights, without being aware of that infringement, must be regarded as not stocking those goods in order to offer them or put them on the market for the purposes of those provisions, if that person does not itself pursue those aims.

Costs

- 54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 9(2)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark and Article 9(3)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark must be interpreted as meaning that a person who, on behalf of a third party, stores goods which infringe trade mark rights, without being aware of that infringement, must be regarded as not stocking those goods in order to offer them or put them on the market for the purposes of those provisions, if that person does not itself pursue those aims.

[Signatures]