— annul the decision of the Fourth Board of Appeal of the EUIPO of 4 December 2015 in case R 2345/2014-4;

— in the alternative refer the case back to the General Court of the European Union;

— order the respondent and the intervener to bear the costs both in relation to the proceedings at first instance and the appeal.

Pleas in law and main arguments

The appellant submits that the contested decision infringes Articles 51 (1) (a) and 15 (1) CTMR (now Articles 58 (1) (a) and 18 (1) of Regulation (EU) 2017/1001 ([1]) of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, hereinafter referred to as 'EUTMR') in several regards. In particular the General Court did not correctly determine the meaning of the term 'the trade mark' in Articles 51 (1) (a) and 15 (1) CTMR.

(1) First, the General Court misjudged the importance, and the legal consequences of, determining the type of mark concerned. It wrongly assumed that it did not matter whether the contested trademark was classified as a figurative mark or as a position mark. In fact, however, the distinction between different types of marks has a significant influence on their subject matter as well as on the way in which they are used. The use of the contested trademark as a figurative mark would differ considerably from the way in which it would be used if it was a position mark.

(2) Second, the General Court did not correctly determine the subject matter of the contested trademark, but regarded and treated the contested trade mark as a position mark. The contested mark is a figurative mark, since it has been applied for and registered as a figurative mark, and no description or disclaimer was entered that suggested otherwise. The mere use of broken lines does not make a figurative mark a position mark.

(3) As a consequence, the General Court incorrectly assumed that Munich S.L. showed genuine use of its mark by showing the sale of shoes, to the side of which two intersecting lines were applied. This kind of use could only account for the use of a position mark, but not for the use of a figurative mark like the contested one.

([1]) OJ 2017, L 154, p. 1.

Request for a preliminary ruling from the Landesverwaltungsgericht Tirol (Austria) lodged on 30 March 2018 — PI

(Case C-230/18)

(2018/C 249/07)

Language of the case: German

Referring court

Landesverwaltungsgericht Tirol

Parties to the main proceedings

Complainant: PI

Defendant authority: Landespolizeidirektion Tirol

Questions referred

1. Is Article 15(2) of the Charter of Fundamental Rights of the European Union, according to which every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State, to be understood as precluding legislation of a Member State which, as in the case of Paragraph 19(3) of the Tiroler Landespolizeigesetz (Tyrol State police Law), LGBl. (State Law Gazette) No 60/1976, last amended by Law LGBl. No 56/2017, makes it possible for bodies of an authority, even without a prior administrative procedure, to be able to take measures of direct authority and coercive power, such as, in particular, the on-the-spot closure of a business establishment, without these merely being interim measures?

2. From the perspective of equality of arms and the perspective of an effective legal remedy, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, as laid down in Paragraph 19(3) and (4) of the Tyrol State police Law, provides for de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, without documentation and without providing confirmation to the person concerned?

3. From the perspective of equality of arms, is Article 47 of the Charter, potentially in conjunction with Articles 41 and 52 thereof, to be understood as precluding legislation of a Member State which, for the purpose of annulling de facto measures of direct authority and coercive power, such as, in particular, closures of business establishments, requires a substantiated application to lift that closure from the person affected by those de facto measures, as laid down in Paragraph 19(3) and (4) of the Tyrol State police Law?

4. From the perspective of an effective legal remedy, is Article 47 of the Charter, in conjunction with Article 52 thereof, to be understood as precluding legislation of a Member State which, as in the case of Paragraph 19(4) of the Tyrol State police Law, allows only for a right to apply for annulment that is restricted to specific conditions in the case of a de facto coercive measure in the form of the closure of a business establishment?

Request for a preliminary ruling from the Thüringer Oberlandesgericht (Germany) lodged on 3 April 2018 — Saatgut-Treuhandverwaltungs GmbH v Freistaat Thüringen

(Case C-239/18)

(2018/C 249/08)

Language of the case: German

Referring court

Thüringer Oberlandesgericht

Parties to the main proceedings

Applicant: Saatgut-Treuhandverwaltungs GmbH

Defendant: Freistaat Thüringen

Questions referred

1. Does a right to information from official bodies under Article 11(1) of Regulation (EC) No 1768/95 ([1]) exist in a situation where a request relates solely to information concerning species of plants, without the request for information also seeking information on a protected variety?

2. If the answer to Question 1 is that such a right to information can exist:

   (a) Is a body which monitors subsidies for farmers from EU funds and, in that respect, stores data which relate to (plant) species obtained from farmers who apply for those subsidies to be regarded as an official body involved in the monitoring of agricultural production within the meaning of the first indent of Article 11(2) of Regulation (EC) No 1768/95?