

Appeal brought on 5 December 2018 by Wallapop, S.L. against the judgment of the General Court (Sixth Chamber) delivered on 3 October 2018 in Case T-186/17, Unipreus v EUIPO — Wallapop (wallapop)

(Case C-763/18 P)

(2019/C 131/25)

Language of the case: Spanish

Parties

Appellant: Wallapop, S.L. (represented by: D. Sarmiento Ramírez-Escudero and N. Porxas Roig, lawyers)

Other parties to the proceedings: European Union Intellectual Property Office and Unipreus, S.L.

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal, for the reasons set out in the single ground of appeal, finding that the services at issue are not similar;
- order Unipreus to pay the costs incurred by Wallapop, both in the proceedings at first instance and in the present proceedings before the Court of Justice.

Grounds of appeal and main arguments

Wallapop, S.L. is bringing an appeal against the judgment of the General Court (Sixth Chamber) of 3 October 2018, delivered in Case T-186/17, ⁽¹⁾ relating to opposition proceedings brought by the company Unipreus, S.L. in respect of Wallapop, S.L.'s application for EU figurative mark No 13268941.

The appeal is based on a single ground of appeal, alleging infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark ⁽²⁾ (now Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark) and the case-law that interprets the assessment of similarity between services.

In particular, the ground of appeal is based on the General Court's erroneous application of the criteria established in the case-law for determining the similarity in terms of application as between trade marks; in essence, the General Court disregarded the concept of marketing and the services that an online market ordinarily provides, according to the meaning attributed to it by legislation and case-law; that is to say, intermediary services rather than marketing or similar services.

The General Court's incorrect assessment carries forward to the analysis in its judgment of the similarity of the services at issue, applying the criteria established in the case-law to that effect (such as nature, distribution channels, intended purpose and perception or competitiveness and complementarity between services).

⁽¹⁾ Judgment of 3 October 2018, *Unipreus v EUIPO — Wallapop (wallapop)* (T-186/17, not published, EU:T:2018:640).

⁽²⁾ OJ 2009 L 78, p. 1.