Pleas in law and main arguments

1. The General Court erred in considering that the Board of Appeal was correct to transpose the conclusions from the General Court's earlier HELLIM and ΧΑΛΛΟΥΜΙ and HALLOUMI judgments to the present case. Those cases were not concerned with certification marks but different kinds of marks, namely collective and ordinary EU trade marks respectively. The essential function of such marks is to act as an indication of the commercial origin of the goods (a plurality of traders linked by membership of an association in the case of a collective mark). Certification marks, by contrast, do not have the essential function of indicating origin, but of distinguishing a class of goods, namely goods which are certified in that they in fact comply with and have been authorised to be made under the regulations for permitted use of the HALLOUMI certification mark. Moreover the relevant public in those earlier General Court judgments was different to the relevant public in the present case.

2. The General Court wrongly held that an earlier national mark — the national certification mark in this case — wholly lacked distinctive character as distinguishing goods which are certified from those which were not; wrongly holding the mark to be descriptive; wrongly undermining the national protection of the national mark; and wrongly calling into question in EUIPO opposition proceedings the validity of the said mark.

3. The General Court erred in the comparison of the marks and the assessment of the likelihood of confusion. It wrongly approached these questions as if the earlier mark were an origin-indicating trade mark rather than a certification mark. It failed to accord the earlier mark any distinctiveness as a certification mark, i.e. as distinguishing goods which in fact complied with the standards of the certification mark and were in fact made by producers authorised by the certification mark holder. It also failed to consider how certification marks are typically used (i.e. invariably along with a distinctive name, trade mark or logo). It failed to consider the meaning and significance of the contested EUTM, in particular by failing to consider whether the 'HALLOUMI' element had an independent distinctive character in the later mark as a sign indicating, contrary to fact, that the goods covered by the contested EUTM were certified.

4. The General Court failed to consider national provisions and case law as to the scope and effect of national certification marks. The conditions and modalities of Member States' laws on certification marks were not harmonised under the Trade Marks Directives 89/104 [1] or 2008/95 [2] and yet the EUTMR provides that such national marks can form the basis of earlier rights which prevent registration of EUTMs. Such rights should be considered in the light of national case law and national provisions, by analogy with the various national rights under Article 8(4) EUTMR (which rights are also not harmonised and vary greatly in their nature, scope and effect from Member State to Member State).

[1] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989, L 40, p. 1).

[2] Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008, L 299, p. 25).

Request for a preliminary ruling from the Amtsgericht Erding (Germany) lodged on 10 December 2018 — U.B. and T.V. v Eurowings GmbH

(Case C-776/18)

(2019/C 82/13)

Language of the case: German

Referring court

Amtsgericht Erding

Parties to the main proceedings

Applicants: U.B., T.V.

Defendant: Eurowings GmbH

Question referred

In the event of a cancellation within the meaning of Article 5 of Regulation (EC) No 261/2004, ([1]) is it to be assumed that there has been an offer to re-route allowing passengers to reach their final destination no more than two hours after their scheduled time of arrival also in the case where replacement transportation is provided to an airport other than that named in the booking confirmation, if that other airport is located in the same region?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Conseil supérieur de la Sécurité sociale (Luxembourg) lodged on 19 December 2018 — EU v Caisse pour l'avenir des enfants

(Case C-801/18)

(2019/C 82/14)

Language of the case: French

Referring court

Conseil supérieur de la Sécurité sociale

Parties to the main proceedings

Appellant: EU

Respondent: Caisse pour l'avenir des enfants

Questions referred

1. Are the competent social security authorities of one Member State (in this case the Caisse pour l'avenir des enfants (Children's Future Fund), Luxembourg) required, pursuant to their Community obligations under Article 45 TFEU, Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ([1]) and Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, ([2]) in particular Article 4 thereof, to pay family benefits to a national of a second Member State when, under identical conditions for the grant of those benefits, those competent authorities recognise the entitlement of their own nationals and residents to family benefits, pursuant to a bilateral international convention concluded between the first Member State (Luxembourg) and the third country (Brazil)?

2. In the affirmative, and in the event that the approach taken in the judgment in *Gottardo* ([3]) is extended to the context of family benefits, can the competent social security authority, more particularly the competent authority for family benefits — in this case, the Caisse pour l'avenir des enfants (Children's Future Fund), the national agency of the Grand-Duchy of Luxembourg for family benefits — rely on objective grounds based on considerations relating to the extremely heavy financial and administrative burdens faced by the authority in question to justify a difference in treatment between nationals of countries that are contracting parties (to the bilateral convention concerned) and other nationals of European Union Member States?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

([2]) OJ 2004 L 166, p. 1.

([3]) Judgment of 15 January 2002, *Gottardo* (C-55/00, EU:C:2002:16).