

Appeal brought on 11 January 2019 by the Court of Auditors of the European Union against the judgment of the General Court (Third Chamber) delivered on 8 November 2018 in Case T-874/16, RA v Court of Auditors

(Case C-27/19 P)

(2019/C 238/05)

Language of the case: French

Parties

Appellant: Court of Auditors of the European Union (represented by: E. von Bardeleben, C. Lesauvage, acting as Agents)

Other party to the proceedings: RA

By order of 24 April 2019, the Court (Ninth Chamber) removed the case from the register of the Court.

Appeal brought on 7 March 2019 by *achtung!* GmbH against the judgment of the General Court (Ninth Chamber) delivered on 10 January 2019 in Case T-832/17 *achtung!* GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-214/19 P)

(2019/C 238/06)

Language of the case: German

Parties

Appellant: *achtung!* GmbH (represented by: G.J. Seelig and D. Bischof, Rechtsanwälte)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court in Case T-832/17 of 10 January 2019;
- grant the first and third heads of claim in the form of order sought at first instance in the application of 22 December 2017;
- order EUIPO also to pay the further costs incurred in these proceedings.

Grounds of appeal and main arguments

The appellant relies on the following three grounds of appeal:

It is alleged in the first ground of appeal that the General Court erred in law in its assessment of the distinctive character of the mark applied for, 'achtung!' (word/figure), under Article 7(1)(b) of the European Union Trade Mark Regulation. ⁽¹⁾ The General Court erred in law in so far as it accepted in the judgment under appeal that a sign was devoid of any distinctive character if, according to one possible meaning of that sign, it can be interpreted as advertising praise. Further, the General Court assessed the distinctive character of the term 'Achtung' instead of that of the sign applied for, 'achtung!'. In addition, in the course of its assessment of distinctive character, the General Court made an incorrect assumption of fact without taking evidence on the material questions.

It is also alleged in the second ground of appeal that the General Court erred in law in its assessment of distinctive character under Article 7(1)(b) of the European Union Trade Mark Regulation. The General Court erred in law in the judgment under appeal in so far as it assumed that the fact that goods and services were the 'subject of advertising' was a suitable common indicator to justify the automatic conclusion that there is no distinctive character in respect of all goods and services covered by the application.

In the third ground of appeal it is alleged that the principles of equal treatment and sound administration have been breached. The General Court erred in law in so far as it failed to examine whether the Board of Appeal had considered to a sufficient degree the appellant's relevant prior registrations and had examined in its decision whether the same conclusion should be reached or not. The complete failure to take into account identical prior registrations with EUIPO constitutes an error in law.

⁽¹⁾ Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ L 154, 16.6.2017, p. 1).

Request for a preliminary ruling from the Juzgado Contencioso-Administrativo No 2 de Ourense (Spain) lodged on 20 March 2019 — FA v Tesorería General de la Seguridad Social (TGSS)

(Case C-240/19)

(2019/C 238/07)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo No 2 de Ourense

Parties to the main proceedings

Applicant: FA

Defendant: Tesorería General de la Seguridad Social (TGSS)

Questions referred

1. Where a national provision, such as Article 2(2)(a) of Order TAS 2865/2003, requires that a person must have left a social security scheme in order to be eligible for voluntary insurance or optional continued insurance, must the person concerned have left a Spanish social security scheme or, on the other hand, in accordance with the principle of equal treatment of facts laid down in Article 5(b) of Regulation No 883/2004, ⁽¹⁾ must the Spanish competent institution take account of the fact that the person concerned has left a similar social security scheme of another Member State, as though that had occurred in Spain?