

5. Article 9(2) and Article 15(2) of Regulation 2017/1001 and Article 10(2) and Article 15(2) of Directive 2015/2436

must be interpreted as meaning that the proprietor of a trade mark may oppose the marketing in a Member State by a parallel importer of a medicinal product imported from another Member State which that importer has repackaged in new outer packaging to which he or she has reaffixed the trade mark of the proprietor specific to that product, but not the other trade marks and/or other distinctive signs which appeared on the original outer packaging of that medicinal product, where the presentation of that new outer packaging is in fact liable to damage the reputation of the trade mark or where that presentation does not enable normally informed and reasonably attentive consumers, or enables them only with difficulty, to ascertain whether that medicinal product originates from the proprietor of the trade mark or an undertaking economically linked to him or her or, on the contrary, originates from a third party, thus adversely affecting the function of indicating the origin of the mark.

(¹) OJ C 279, 24.8.2020.

Judgment of the Court (Fifth Chamber) of 17 November 2022 (requests for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Impexeco NV v Novartis AG (C-253/20), PI Pharma NV v Novartis AG, Novartis Pharma NV (C-254/20)

(Joined Cases C-253/20 and C-254/20) (¹)

(References for a preliminary ruling — Articles 34 and 36 TFEU — Free movement of goods — Intellectual property — Trade marks — Regulation (EC) No 207/2009 — Article 9(2) — Article 13 — Directive 2008/95 — Article 5(1) — Article 7 — Rights conferred by a trade mark — Exhaustion of the rights conferred by a trade mark — Parallel imports of medicinal products — Reference medicinal product and generic medicinal product — Economically linked undertakings — Repackaging of the generic medicinal product — New outer packaging — Affixing the trade mark of the reference medicinal product — Opposition by the proprietor of the trade mark — Artificial partitioning of the markets between the Member States)

(2023/C 15/05)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicants: Impexeco NV (C-253/20), PI Pharma NV (C-254/20)

Defendants: Novartis AG (C-253/20), Novartis AG, Novartis Pharma NV (C-254/20)

Operative part of the judgment

Article 9(2) and Article 13 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark, as amended by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015, and Article 5(1) and Article 7 of 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, read in the light of Articles 34 and 36 TFEU,

must be interpreted as meaning that

the proprietor of the trade mark of a reference medicinal product and the trade mark of a generic medicinal product may oppose the placing on the market of a Member State, by a parallel importer, of that generic medicinal product imported from another Member State, where that medicinal product has been repackaged in new outer packaging to which the trade mark of the corresponding reference medicinal product has been affixed, unless, first, the two medicinal products are identical in all respects and, second, the replacement of the trade mark satisfies the conditions laid down in paragraph 79 of the judgment of 11 July 1996, *Bristol-Myers Squibb and Others* (C-427/93, C-429/93 and C-436/93, EU:C:1996:282); in paragraph 32 of the judgment of 26 April 2007, *Boehringer Ingelheim and Others* (C-348/04, EU:C:2007:249); and in paragraph 28 of the judgment of 17 May 2018, *Junek Europ-Vertrieb* (C-642/16, EU:C:2018:322).

⁽¹⁾ OJ C 297, 7.9.2020.

Judgment of the Court (Second Chamber) of 17 November 2022 — Volotea SA (C-331/20 P), easyJet Airline Co. Ltd (C-343/20 P) v European Commission

(Joined Cases C-331/20 P and C-343/20 P) ⁽¹⁾

(Appeal — State aid — Article 107(1) TFEU — European Commission decision on compensation to Sardinian airports for public service obligations — Existence of unlawful State aid incompatible with the internal market, granted by the Italian Republic to airlines through airport operators — Concept of ‘State aid’ — Proof of the existence of an advantage — Determination of the amount — Market economy operator principle — Applicability and application — Test of the private acquirer of goods or services — Conditions — Burden of proof)

(2023/C 15/06)

Language of the case: English

Parties

Appellants: Volotea SA (represented by M. Carpagnano, avvocato, and M. Nordmann, Rechtsanwalt), easyJet Airline Co. Ltd (represented by A. Manzanegue Valverde and J. Rivas Andrés, abogados)

Other party to the proceedings: European Commission (represented by D. Grespan, S. Noë, L. Armati and D. Recchia, acting as Agents)

Operative part of the judgment

The Court:

1. Sets aside the judgment of the General Court of the European Union of 13 May 2020, *Volotea v Commission* (T-607/17, EU:T:2020:180);
2. Sets aside the judgment of the General Court of the European Union of 13 May 2020, *easyJet Airline v Commission* (T-8/18, EU:T:2020:182), in so far as that court dismissed the action for annulment of easyJet Airline Co. Ltd as unfounded;
3. Annuls European Commission Decision (EU) 2017/1861 of 29 July 2016 on State aid SA33983 (2013/C) (ex 2012/NN) (ex 2011/N) — Italy — Compensation to Sardinian airports for public service obligations (SGEI), in so far as it concerns, first, Volotea SA, and, second, easyJet Airline Co. Ltd;
4. Orders the European Commission to pay the costs related to the proceedings at first instance and to the proceedings on appeal.

⁽¹⁾ OJ C 297, 7.9.2020.