



Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 23 March 2023¹

Case C-832/21

**Beverage City & Lifestyle GmbH,
MJ,
Beverage City Polska sp. z o.o.,
FE
v
Advance Magazine Publishers Inc.**

(Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany))

(Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Regulation (EU) No 1215/2012 – Special jurisdiction – Article 8(1) – More than one defendant – EU trade mark – Regulation (EU) 2017/1001 – Articles 122 and 125 – International jurisdiction in infringement and validity matters – Action for infringement of an EU trade mark brought against a number of defendants domiciled in different Member States – Jurisdiction of the courts of the place where the managing director of a defendant company is domiciled – Jurisdiction of the court seised in respect of the co-defendants domiciled outside the forum Member State – Claims so closely connected that it is expedient to hear and determine them together – Concept of ‘so closely connected’ – Relationship between a supplier and its customer)

I. Introduction

1. This request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany) concerns the interpretation of Article 8(1) of Regulation (EU) No 1215/2012,² which is to be read in conjunction with Article 122 of Regulation (EU) 2017/1001.³

2. The request has been made in proceedings between the proprietor of an EU trade mark, established in the United States, and a distributor and its supplier of goods, domiciled in Germany and Poland respectively, concerning their alleged infringement of that trade mark.

¹ Original language: French.

² Regulation of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1).

³ Regulation of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1; ‘EUTMR’).

3. In the particular context of this action, which is subject to its own rules of jurisdiction, the Court of Justice is asked to supplement its case-law on the conditions for the application of the special rule laid down in Article 8(1) of Regulation No 1215/2012, which allows multiple defendants, domiciled in different Member States, to be brought before the court of the place in which only one of them is domiciled, when the claims brought before the referring court are directed against different companies and their managers, against whom proceedings are brought not only in their capacity as legal representatives of those companies, but also in their personal capacity.

4. I will set out the reasons why I take the view that the proprietor of an EU trade mark, who considers that he or she has been the victim of acts of infringement, may bring an action before a single court which will have jurisdiction to rule on all of the claims relating to the acts committed by different infringers in respect of the same goods, especially in the context of an exclusive supply contract, provided that, when the action is brought, the role of the anchor defendant in the infringement chain is justified.

II. European Union law

A. Regulation No 1215/2012

5. Article 8(1) of Regulation No 1215/2012 states:

‘A person domiciled in a Member State may also be sued:

- (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.’

B. The EUTMR

6. Article 1 EUTMR, headed ‘EU trade mark’, provides in paragraph 2:

‘An EU trade mark shall have a unitary character. It shall have equal effect throughout the Union: it shall not be registered, transferred or surrendered or be the subject of a decision revoking the rights of the proprietor or declaring it invalid, nor shall its use be prohibited, save in respect of the whole Union. This principle shall apply unless otherwise provided for in this Regulation.’

7. Article 17 EUTMR, headed ‘Complementary application of national law relating to infringement’, states:

‘1. The effects of EU trade marks shall be governed solely by the provisions of this Regulation. In other respects, infringement of an EU trade mark shall be governed by the national law relating to infringement of a national trade mark in accordance with the provisions of Chapter X [in particular Articles 129 and 130].

2. This Regulation shall not prevent actions concerning an EU trade mark being brought under the law of Member States relating in particular to civil liability and unfair competition.

3. The rules of procedure to be applied shall be determined in accordance with the provisions of Chapter X.’

8. Chapter X EUTMR, headed ‘Jurisdiction and procedure in legal actions relating to EU trade marks’, contains Articles 122 to 135. Article 125, headed ‘International jurisdiction’, provides:

‘1. Subject to the provisions of this Regulation as well as to any provisions of Regulation [No 1215/2012] applicable by virtue of Article 122, proceedings in respect of the actions and claims referred to in Article 124 [in particular actions for infringement] shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.

...

5. Proceedings in respect of the actions and claims referred to in Article 124, with the exception of actions for a declaration of non-infringement of an EU trade mark, may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened, or in which an act referred to in Article 11(2) has been committed.’

III. The facts of the dispute in the main proceedings and the question referred for a preliminary ruling

9. Advance Magazine Publishers Inc. is the proprietor of a number of EU trade marks containing the word element ‘Vogue’, which it claims are trade marks with a reputation.

10. Beverage City Polska sp. z o.o. is a company incorporated under Polish law with its registered office in Kraków (Poland), the managing director of which, FE, is domiciled in the same city. It manufactures, advertises and distributes an energy drink under the name ‘Diamant Vogue’.

11. Beverage City & Lifestyle GmbH is a company incorporated under German law with its registered office in Schorfheide in Brandenburg (Germany). Its managing director, MJ, is domiciled in North Rhine-Westphalia (Germany). That company was connected with Beverage City Polska through an exclusive distribution agreement for Germany and sourced the energy drink bearing that name in Poland from Beverage City Polska. The two companies are not affiliated companies, despite the similarity in name.

12. Taking the view that it has been the victim of acts of infringement of its trade marks, the applicant brought⁴ an action against those companies and their managing directors before the Landgericht Düsseldorf (Regional Court, Düsseldorf), as the EU trade mark court with jurisdiction for North Rhine-Westphalia, for injunctive relief throughout the European Union and for information, the disclosure of accounts and a declaration of liability for damages. Those supplementary claims were later limited to acts in Germany.

⁴ On 19 September 2018, as stated in the judgment of the Landgericht Düsseldorf (Regional Court, Düsseldorf), sent by the referring court. Regulation No 1215/2012 is therefore applicable, in accordance with Article 66 thereof. See, in that regard, judgment of 5 September 2019, *AMS Neve and Others* (C-172/18, ‘judgment in *AMS Neve and Others*’, EU:C:2019:674, paragraphs 34 and 36 and the case-law cited).

13. Beverage City Polska and its managing director, FE, in an appeal before the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf), are challenging⁵ the decision of the Landgericht Düsseldorf (Regional Court, Düsseldorf), which, before granting the applicant's claims, based its international jurisdiction over them on Article 8(1) of Regulation No 1215/2012, referring to the principles established in the judgment of 27 September 2017, *Nintendo*.⁶

14. They maintain before the referring court that they had operated and delivered goods to their customers exclusively in Poland. The judgment in *Nintendo* is not, it is argued, transposable to their situation on the ground that they and Beverage City & Lifestyle and its managing director are not connected to each other in any relevant way.

15. The referring court points out, first, that the international jurisdiction of the Landgericht Düsseldorf (Regional Court, Düsseldorf), is based, under Article 125(1) EUTMR, on the place of domicile of the managing director of the German company, which it describes as an anchor defendant.⁷

16. Second, as regards the co-defendants domiciled in Poland, the approach taken in the judgment in *Nintendo* is based on the fact that, in the case which gave rise to that judgment, the defendants were connected by belonging to the same group of companies, which is not the case here. In fact, only a supply relationship exists between Beverage City & Lifestyle and Beverage City Polska. Since the managing directors of those companies are only being sued as the respective representatives of those legal persons, there is no relationship between the anchor defendant and the defendants domiciled in Poland. The question therefore arises as to whether a factual connection in the form of a supply chain is sufficient.

17. The referring court also takes the view that account should be taken of the fact that the dispute concerns the same trade marks and infringing goods, so that there is a risk of irreconcilable judgments in the event of a difference in the assessment of distribution as an act of infringement if proceedings are brought before different courts. It is also of the opinion that such a risk could be found if the same goods, marketed within the European Union, were sourced from a third party. That court also points out that the conditions for the application of Article 8(1) of Regulation No 1215/2012 must not undermine the rule of jurisdiction in Article 125 EUTMR.

18. In those circumstances, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf), decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Are claims “so closely connected” that it is expedient to hear and determine them together to prevent irreconcilable judgments, within the meaning of Article 8(1) of [Regulation No 1215/2012], where, in infringement proceedings for infringement of an EU trade mark, the connection consists in the fact that the defendant domiciled in a Member State (here, Poland) supplied the goods which infringe an EU trade mark to a defendant domiciled in another Member State (here, Germany) whose legal representative, against whom infringement

⁵ The referring court stated that Beverage City & Lifestyle and its managing director, MJ, withdrew the appeal which they had initially lodged.

⁶ C-24/16 and C-25/16, ‘judgment in *Nintendo*’, EU:C:2017:724.

⁷ This term refers only to the co-defendant whose domicile justifies the jurisdiction of the court seised. See, for a previous use of this term, the Opinion of Advocate General Jääskinen in *CDC Hydrogen Peroxide* (C-352/13, EU:C:2014:2443, point 56).

proceedings have also been brought, is the anchor defendant, if the parties are connected to each other only through the mere supply relationship beyond which there is no legal or factual connection?’

19. Written observations have been submitted by the applicant, Beverage City Polska and FE, the Polish and Portuguese Governments and the European Commission. At the hearing, which was held on 12 January 2023, Beverage City & Lifestyle, Beverage City Polska, the applicant and the Commission presented their oral observations and replied to the questions put to them by the Court for an oral answer.

IV. Analysis

20. By its single question referred for a preliminary ruling, the referring court seeks to determine, in essence, whether Article 8(1) of Regulation No 1215/2012, read in conjunction with Article 122 EUTMR, can be interpreted as meaning that more than one defendant, domiciled in different Member States, may be sued in the courts for the place where one of them is domiciled that are seised, in the context of infringement proceedings, of claims brought against them by the proprietor of an EU trade mark where the defendants are alleged to have infringed that trade mark in a materially identical manner through each of their acts in a supply chain.

21. The case-law of the Court of Justice already provides helpful pointers for infringement actions relating to intellectual property rights. In that regard, it should be noted that the Court’s interpretation of the provisions of Regulation (EC) No 44/2001⁸ also applies to the provisions of Regulation No 1215/2012, which may be regarded as ‘equivalent’.⁹ The same applies with regard to Regulation (EC) No 207/2009,¹⁰ which has been codified, with its amendments, by the EUTMR.¹¹

22. In the case in the main proceedings, the referring court is seised, in its capacity as an EU trade mark court, of an action for infringement of EU trade marks brought against the *seller* in Germany of goods allegedly infringed, Beverage City & Lifestyle, which is established in Germany, and against their *manufacturer*, Beverage City Polska, a company established in Poland, and their respective managing directors.

23. Consequently, the question posed by that court, which concerns its international jurisdiction over the latter defendant and its managing director, is governed by Articles 122, 124, 125 and 126 EUTMR.

24. Those provisions have the character of *lex specialis* in relation to the rules laid down by Regulation No 1215/2012.¹²

25. Thus, *in matters of infringement*, in accordance with Article 124(a) EUTMR, the EU trade mark courts have exclusive jurisdiction.

⁸ Council Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

⁹ See judgment of 30 June 2022, *Allianz Elementar Versicherung* (C-652/20, EU:C:2022:514, paragraph 20 and the case-law cited).

¹⁰ Council Regulation of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

¹¹ For a reminder of the history of the regulations since the creation of the Community trade mark by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), see judgment in *AMS Neve and Others* (paragraph 3).

¹² See judgment in *AMS Neve and Others* (paragraph 34 and the case-law cited).

26. In the case of infringement actions, Article 125(1) EUTMR establishes the *international jurisdiction* of the court of the Member State *in which the defendant is domiciled*.¹³

27. This is not the only forum provided for by the EUTMR. The court of the Member State *in which the act of infringement has been committed* may also have jurisdiction, in accordance with Article 125(5) EUTMR.¹⁴

28. In that regard, it is important to point out that, because of that specific rule, Article 122(2)(a) EUTMR expressly excludes the application of Article 7(2) of Regulation No 1215/2012, which lays down a rule of special jurisdiction in matters relating to tort, delict or quasi-delict.¹⁵

29. In contrast, there is no specific provision in the EUTMR which prohibits the application of Article 8 of Regulation No 1215/2012,¹⁶ paragraph 1 of which lays down a rule of derived jurisdiction in the event of more than one defendant domiciled in different Member States. The defendants may be sued, under that provision, *before the courts for the place where one of the defendants is domiciled*.¹⁷ The latter may sometimes be designated, as in the main proceedings, as an anchor defendant.¹⁸

¹³ That choice has a bearing on the extent of the jurisdiction of the EU trade mark court before which the matter has been brought. Article 126(1)(a) EUTMR provides that said court shall have jurisdiction in respect of acts of infringement committed or threatened *within the territory of any of the Member States*. See, by analogy, as regards the jurisdiction of the Community design court to order the measures necessary to penalise infringement throughout the territory of the European Union and not solely for the damage suffered in the place where its jurisdiction is based by reason of the domicile of the anchor defendant, judgment in *Nintendo* (paragraphs 61 to 67).

¹⁴ As regards the alternative nature of the forum indicated in this point, see judgment in *AMS Neve and Others* (paragraph 41), on the equivalent provisions of Regulation No 207/2009, codified by the EUTMR. This procedural choice determines the extent of the territorial jurisdiction of the EU trade mark court, since it is limited to acts committed or threatened within the territory of the Member State in which that court is situated, in accordance with Article 126(2) EUTMR. As regards the equivalent provisions, see judgment in *AMS Neve and Others* (paragraph 40).

¹⁵ See judgment of 5 June 2014, *Coty Germany*, (C-360/12, EU:C:2014:1318, paragraph 36).

¹⁶ Neither Article 122(2) EUTMR nor any other provision thereof refers to that article or the rule of jurisdiction contained therein. As is clear from Article 122(1) of that regulation, in the absence of an exclusion provided for therein, the application of Regulation No 1215/2012 is subsidiary. The same is true of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1), pursuant to Article 79 thereof. Furthermore, it must be borne in mind that, although the purpose of Regulation No 1215/2012 is to define a general framework, it nevertheless contains an important exception in intellectual property matters. Article 24(4) of that regulation lays down a rule of exclusive jurisdiction where the validity of an intellectual property right is challenged through an action or a plea in objection. However, on that point, the EUTMR contains special provisions: the presumption of validity of the EU trade mark is set out in Article 127, unless its validity is challenged by a counterclaim under the conditions laid down in Article 128.

¹⁷ See, for a reminder of that requirement, judgment of 27 October 1998, *Réunion européenne and Others* (C-51/97, EU:C:1998:509, paragraphs 44 to 46). In addition, all defendants must be domiciled in the European Union (see judgment of 11 April 2013, *Sapir and Others*, C-645/11, EU:C:2013:228, paragraph 52). I note that the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007, the conclusion of which was approved on behalf of the European Community by Council Decision 2009/430/EC of 27 November 2008 (OJ 2009 L 147, p. 1), known as the 'Lugano II Convention', contains an identical provision in Article 6(1).

¹⁸ It remains so despite the developments in the proceedings. Thus, the withdrawal of the appeal initially brought by him, as, in the present case, by the company he represents (see footnote 5 to this Opinion), has no bearing on the need to ascertain whether there is a close connection between the claims when they are brought. See, as regards the stage of the proceedings at which the existence of such a connection between the claims must be assessed, judgment of 21 May 2015, *CDC Hydrogen Peroxide* (C-352/13, 'judgment in *CDC Hydrogen Peroxide*', EU:C:2015:335, paragraphs 28 and 29), as well as the Opinion of Advocate General Jääskinen in *CDC Hydrogen Peroxide* (C-352/13, EU:C:2014:2443, points 78 and 79). Previously, the Court had held, in its judgment of 13 July 2006, *Reisch Montage* (C-103/05, EU:C:2006:471, paragraphs 27 and 33), that the national law of the Member States, under which an appeal against a co-defendant is inadmissible, does not affect the application of Article 6(1) of Regulation No 44/2001, now Article 8(1) of Regulation No 1215/2012. See also, on the jurisdiction of an EU trade mark court hearing an action for infringement based on an EU trade mark, the validity of which is challenged by means of a counterclaim for a declaration of invalidity, to rule on the validity of that mark, in spite of the withdrawal of the main action, the judgment of 13 October 2022, *Gemeinde Bodman-Ludwigshafen* (C-256/21, EU:C:2022:786, paragraphs 55 and 58), as well as the Opinion of Advocate General Pitruzzella in *Gemeinde Bodman-Ludwigshafen* (C-256/21, EU:C:2022:366, points 66 to 73), for a detailed reminder of the cases in which the principle of *perpetuatio fori* applies.

30. As before any other court of a Member State, this option offered to the applicant is subject to a condition set out in Article 8(1) of Regulation No 1215/2012, namely that ‘the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings’.

31. That requirement, first introduced in Article 6(1) of Council Regulation No 44/2001, arises from the decision taken by the Court in its judgment of 27 September 1988, *Kalfelis*.¹⁹ It contributes to the implementation of one of the main objectives of that regulation, which is reinforced by Regulation No 1215/2012,²⁰ which is to ensure the proper circulation of judicial decisions within the European Union. That objective requires the avoidance of concurrent proceedings.²¹

32. In so far as that rule of jurisdiction departs from the general rule based on the defendant’s domicile, the Court has held that its interpretation must not go beyond the cases expressly envisaged by those regulations.²²

33. The Court has pointed out that it is for the referring court to assess whether there is a connection between the different claims in the light of the objective pursued, which is to avoid irreconcilable judgments.²³ In that regard, it has stated that divergent judgments relating to ‘the same situation of fact and law’ would be irreconcilable.²⁴

A. The concept of the ‘same situation of law’

34. I note that the referring court does not express any doubt on this issue. However, in my view, its request for a preliminary ruling provides an opportunity to clarify the scope of the judgment in *Nintendo*,²⁵ which was discussed by the parties in their written observations.

¹⁹ 189/87, EU:C:1988:459. See, for a reminder of the legislative history, judgment of 11 October 2007, *Freeport* (C-98/06, EU:C:2007:595, paragraph 53).

²⁰ See recital 26 of that regulation.

²¹ See recital 21 of Regulation No 1215/2012. It is also a question of ensuring the enforcement of judgments. See, in that regard, Article 45(1)(c) of that regulation, which provides that the recognition of a judgment is to be refused, on the application of any interested party, if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed.

²² See judgments of 11 October 2007, *Freeport* (C-98/06, EU:C:2007:595, paragraph 35); of 1 December 2011, *Painer* (C-145/10, EU:C:2011:798, paragraph 74); of 12 July 2012, *Solvay* (C-616/10, ‘judgment in *Solvay*’, EU:C:2012:445, paragraph 21); of 11 April 2013, *Sapir and Others* (C-645/11, EU:C:2013:228, paragraph 41); and in *CDC Hydrogen Peroxide* (paragraph 18).

²³ See, in particular, judgment in *Solvay* (paragraph 23). Furthermore, in its judgment of 13 July 2006, *Roche Nederland and Others* (C-539/03, EU:C:2006:458, paragraph 26), the Court stated that, ‘in order that decisions may be regarded as contradictory it is not sufficient that there be a divergence in the outcome of the dispute’. In practice, at the stage of lodging the application, it is more difficult to assess that element rather than the same situation of fact and law.

²⁴ See, in particular, judgment in *CDC Hydrogen Peroxide* (paragraph 20 and the case-law cited) and judgment in *Nintendo* (paragraph 45).

²⁵ That judgment is in line with the Court’s case-law on the application of Article 8(1) of Regulation No 1215/2012 in certain disputes concerning infringement of EU law on patents, competition and designs. That case-law takes into account the specific nature of the legislation on intellectual property, which seeks to ensure the exclusive retention of such intangible property, which is easily accessible to all. See, to that effect, reflections by Kur, A. and Maunsbach, U., ‘Choice of law and Intellectual Property Rights’, *Oslo Law Review*, Vol. 6, No 1, 2019, pp. 43 to 61, in particular p. 44. Furthermore, the evolution of the Court’s decisions is based on the level of protection conferred by EU law which implies avoiding fragmentation of litigation (see, in that regard, Georgakoudi, N., *Les compétences exclusives en matière civile et commerciale : étude de droit international privé*, doctoral thesis defended on 9 December 2021, in particular p. 204, as well as Muir Watt, H., Hashiguchi, M., Nateshan, S. and Sturua, D., ‘Article 8’, in Magnus, U. and Mankowski, P., *European Commentaries on Private International Law, Brussels Ibis Regulation*, 2nd ed., Otto Schmidt, Cologne, 2023, pp. 359 to 392, in particular point 1 (p. 361), point 3 (p. 362) and point 4 (p. 363)). On the history of the harmonisation of substantive intellectual property law, see Kur, A. and Maunsbach, U., op. cit., pp. 50 and 51.

35. In the judgment in *Nintendo*, which concerned an action for infringement of Community designs, the Court retained, as a criterion for the existence of the same situation of law, that of recognition of the exclusive right to use such designs by Regulation No 6/2002. Since that exclusive right has the same effect throughout the European Union, the fact that national law is applied by the national court in order to make certain decisions is irrelevant.²⁶

36. In the judgment in *Nintendo*, the Court also pointed out the difference in approach from that adopted in relation to patents in its judgment of 13 July 2006, *Roche Nederland and Others*,²⁷ in which it had held that the difference in the legal basis of the applications had no bearing on the assessment of the risk of contradictory decisions.²⁸

37. Consequently, having regard to the circumstances of the case in the main proceedings, it appears to me that it is appropriate for the Court to clarify that, because the provisions of Article 19 of Regulation No 6/2002, on which the judgment in *Nintendo* is based, are consistent with those of Article 9 EUTMR relating to the rights of the proprietor of an EU trade mark, an analysis by analogy must be adopted.

38. Specifically, the obligation on the competent court to apply national law, as provided for in Articles 129 and 130 EUTMR²⁹ and in Articles 88 and 89 of Regulation No 6/2002, does not preclude a finding that the same situation of law exists on the following grounds:

- Article 9(1) and (2) EUTMR enshrines the exclusive right conferred on the proprietor of an EU trade mark by its registration, as well as the exclusive right to prevent all third parties from using it without his or her consent, rights which the proprietor seeks to protect by bringing an action for infringement; and
- such a mark has equal effect throughout the European Union, pursuant to Article 1(2) EUTMR.

B. The concept of the ‘same situation of fact’

39. The referring court emphasises the fact that there is only a supply relationship between Beverage City & Lifestyle and Beverage City Polska and that, unlike the companies in the case which gave rise to the judgment in *Nintendo*, those two defendant companies do not belong to the same group.

²⁶ See judgment in *Nintendo* (paragraph 49).

²⁷ C-539/03, EU:C:2006:458.

²⁸ See judgment in *Nintendo* (paragraphs 46 and 47).

²⁹ In accordance with Article 17 EUTMR, read in conjunction with Article 129(2) and Article 130(2) EUTMR, requests for the provision of information, the presentation of accounts and the establishment of an obligation to pay compensation, as other measures or orders, are not governed independently by that regulation, but are governed by the applicable national law. See, by analogy, judgment in *Nintendo* (paragraph 47). It may also be recalled that the right to compensation is provided for in Article 13(1) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45). In addition, as regards the applicable law, reference should be made to Article 8(2) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40). That regulation, which applies in all Member States, with the exception of the Kingdom of Denmark, unified the conflict-of-law rules applicable in civil and commercial matters to non-contractual obligations and, in particular, those arising from infringements of unitary intellectual property rights which occurred after 11 January 2009 (see Article 32 of that regulation). In the event of an action brought against more than one defendant for acts of infringement committed in several Member States, see judgment in *Nintendo* (paragraphs 98 and 104). See, also, judgment in *AMS Neve and Others* (paragraph 64).

40. Although it also points out, in the grounds of its request for a preliminary ruling, that there is no relationship between the defendants domiciled in Poland and the anchor defendant (the managing director of Beverage City & Lifestyle domiciled in Germany), it nevertheless states in its question that ‘infringement proceedings have also been brought’ against that managing director.

41. Since the referring court wishes to know, in essence, whether, in those circumstances, the existence of a supply chain is a sufficient criterion for applying Article 8(1) of Regulation No 1215/2012, the Court is asked to supplement its interpretation of the concept of ‘the same situation of fact’.

42. It appears to me that certain assessment criteria can be deduced from the case-law of the Court.

43. In copyright matters, in its judgment of 1 December 2011, *Painer*,³⁰ the Court held that, in order to assess the risk of irreconcilable judgments if the claims were heard separately, ‘the fact that defendants against whom a copyright holder alleges *substantially identical infringements of his copyright did or did not act independently* may be relevant’.³¹

44. In patent matters, in the judgment in *Solvay*,³² the Court held that, in order to assess whether there is a connection between the different claims brought before it, it is for the national court to take into account, inter alia, the fact that multiple companies established in different Member States are each separately accused of committing the *same infringements* with respect to *the same products*.

45. In Community design matters, in the judgment in *Nintendo*, the Court first noted that ‘the applicant in the main proceedings accuses [the defendants – the parent company and its subsidiary –] of *similar, if not identical, acts that infringe the same protected designs and relate to identical allegedly infringing goods* made by the parent company that sells them on its own account in certain Member States and also sells them to its subsidiary so that the latter may sell them in other Member States’.³³

46. The Court then recalled that it ‘has already held that the case in which *defendant companies* belonging to the same group *have acted in an identical or similar manner* in accordance with a common policy elaborated by one of them must be regarded as constituting the same situation of fact (see, inter alia, judgment of 13 July 2006, *Roche Nederland and Others*, C-539/03, EU:C:2006:458, paragraph 34).³⁴

47. Finally, it concluded that ‘the existence of the same situation of fact must in such circumstances ... *cover all the activities of the various defendants*, including the supplies made by the parent company on its own account, and not be limited to certain aspects or elements of them’.³⁵

³⁰ C-145/10, EU:C:2011:798, paragraph 83.

³¹ Emphasis added.

³² Paragraph 29. As regards the practical consequences of a failure to apply Article 6(1) of Regulation No 44/2001, see paragraph 28 of that judgment.

³³ Judgment in *Nintendo* (paragraph 51). Emphasis added.

³⁴ Judgment in *Nintendo* (paragraph 51). Emphasis added.

³⁵ Judgment in *Nintendo* (paragraph 52). Emphasis added.

48. In my view, it follows, especially as a result of the general wording of that reasoning, which is to be compared with that of paragraph 67 of the same judgment,³⁶ that the determinations to be made by the national court must relate primarily to *the relationship between all the acts of infringement committed*, rather than to the organisational or capital connections between the companies concerned, which the Polish Government and the defendants domiciled in Poland view as essential.

49. In order to meet the objective of avoiding irreconcilable judgments, which is the aim of Article 8(1) of Regulation No 1215/2012, and particularly in EU trade mark matters having equal effect throughout the European Union, it appears to me to be justified to adopt, as the first criterion when characterising the alleged infringement, the common use of a sign identical or similar to the protected mark.³⁷ Thus, the origin of the infringement of the earlier right, to which the defendants have contributed through various actions, is highlighted.

50. In that regard, it is irrelevant whether those actions are identical, such as, for example, the sale by one of the defendants of the same infringing goods to another who sold them.³⁸ Like the Commission and the Portuguese Government, I am of the view that it is also possible to claim, in support of demonstrating the same situation of fact, the existence of an infringement chain comprising various acts, from the manufacture to the disposal of the infringing goods, with or without the help of an intermediary.

51. Moreover, it appears to me that two further arguments, in support of the view that the absence of organisational connections between the defendant companies should not constitute an obstacle to the grouping of claims before a single court, can be derived from the judgment in *Nintendo*.

52. First, in my view, it must be pointed out that, in that judgment, the Court needed to answer the question of whether the jurisdiction of the referring court could cover supplies made by only one company.³⁹

53. Second, as regards the coordinated action criterion, which, according to the Polish Government, should be applied if such is found by the Court in respect of the present case, it does not appear to have been used as a particular condition.

54. A contrary solution would have the effect of limiting compliance with the objectives of the EUTMR, namely:

- according to recital 4 thereof, to ensure, within the framework of the unification of EU law in EU trade mark matters, uniform protection of their effects in all the Member States; and
- according to recitals 31 to 33 thereof, to avoid contradictory decisions by the courts and to ensure that the unitary character of those marks is not undermined, by means of decisions of EU trade mark courts which ‘have effect and cover the entire area of the European Union’.⁴⁰

³⁶ The Court merely noted that ‘the second defendant makes and supplies to the first defendant the goods that the latter sells’.

³⁷ See, in that regard, Article 9 EUTMR from which a definition of acts of infringement may be derived and, to that effect, judgment in *AMS Neve and Others* (paragraph 54). On the concept of ‘use’, see, by analogy, judgment in *Nintendo* (paragraphs 100, 103 and 104).

³⁸ See, as regards this circumstance, judgment in *Solvay* (paragraph 29).

³⁹ See judgment in *Nintendo* (paragraphs 50 and 51).

⁴⁰ See judgment of 18 May 2017, *Hummel Holding* (C-617/15, EU:C:2017:390, paragraph 28).

55. It would also make it possible to circumvent the special and mandatory rules of the EUTMR. I note, first, that, in recital 33 of that regulation, the EU legislature referred to actions brought in the same Member State in which the same parties are involved. It states that ‘when the actions are brought in different Member States, provisions *modelled* on the rules on *lis pendens* and related actions of Regulation [No 1215/2012] appear appropriate’.⁴¹

56. Second, the Court has already taken into consideration the specific nature of trade mark litigation when it interpreted the concept of ‘the Member State in which the act of infringement has been committed or threatened’.⁴²

57. Similarly, in its judgment of 18 May 2017, *Hummel Holding*,⁴³ the Court held that the concept of ‘establishment’ used in Regulation No 207/2009 was not necessarily identical to that used in Regulation No 44/2001, on the ground that those regulations pursue objectives which are not identical. Such a method of analysis appears to me to be transposable to Regulation No 1215/2012 and to the EUTMR.

58. Third, the choice of an independent interpretation designed to protect the unitary character of the EU trade mark effectively in the event of infringement, which would be in line with the development of the Court’s case-law, from the judgment of 27 September 1988, *Kalfelis*,⁴⁴ to the judgment in *Nintendo*,⁴⁵ could be compared to that which led the Court to provide solutions adapted to certain circumstances in relation to competitive activities.⁴⁶ That choice is part of the same logic, which is intended to encourage the penalisation of illegal commercial practices and compensation for economic actors who are victims of them, by guaranteeing the proper administration of justice.⁴⁷

59. However, in this context, it seems to me to be equally important to balance the specificity of these rules of jurisdiction with the requirements usually cited in international jurisdiction matters, rightly invoked by the Polish Government and the defendants domiciled in Poland, namely the facilitated exercise of the rights of the defence and the predictability of the rules of jurisdiction.⁴⁸

⁴¹ Emphasis added.

⁴² See judgment of 5 June 2014, *Coty Germany* (C-360/12, EU:C:2014:1318, paragraphs 32, 34 and 37), relating to that concept that appears in Article 93(5) of Regulation No 40/94, now Article 125(5) EUTMR.

⁴³ C-617/15, EU:C:2017:390, paragraphs 25, 27 and 28. A strict interpretation of the concept of ‘establishment’ is no longer justified since the EUTMR states that the applicant has a choice between the defendant’s domicile and the courts for the place where the infringement was committed. Moreover, the status of establishment is not subject to the condition that the company sued participated directly or indirectly in the commission of the acts giving rise to the dispute (paragraph 40 of that judgment).

⁴⁴ 189/87, EU:C:1988:459. See point 31 of this Opinion.

⁴⁵ See footnote 25 to this Opinion. It should be noted that there is no need to refer to the subsequent judgments delivered in relation to acts of infringement (judgment in *AMS Neve and Others*, and judgment of 3 March 2022, *Acacia*, C-421/20, EU:C:2022:152, in Community designs matters), since the actions were brought before the courts of the Member State in which the act of infringement was committed. See, on this alternative criterion for jurisdiction in EU trade mark matters, footnote 14 to this Opinion.

⁴⁶ See judgment in *CDC Hydrogen Peroxide* (paragraphs 16 and 23 to 25), and judgment of 15 July 2021, *Volvo and Others* (C-30/20, EU:C:2021:604, paragraphs 39 to 42).

⁴⁷ According to recital 16 thereof, Regulation No 1215/2012 aims to lay down, in addition to the defendant’s domicile, alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. See, with regard to Council Regulation (EC) No 44/2001, the judgment in *Solvay* (paragraph 19 and the case-law cited).

⁴⁸ See recital 15 of Regulation No 1215/2012.

60. That is why, as the Commission proposes, particular attention should be paid to the nature of the contractual relationship between the customer and the supplier. That may not only reinforce the existence of a connection between the applicant's claims relating to infringement, but may also reveal the perfectly predictable nature of the obligation to respond to allegations of acts of infringement having the same origin.⁴⁹

61. That is clearly the case, in my view, where there is identical or similar use⁵⁰ of an EU trade mark producing effects throughout the European Union in the context of an exclusive supply contract on the market of another Member State.

62. In the present case, I note, as does the Commission, that the referring court found that the defendant companies established in Germany and Poland respectively were bound by exclusive supply in the former Member State. The risk of such a situation of fact being classed as identical, with a view to justifying the jurisdiction of a single court to rule on claims against all the actors in the same alleged infringement, could not be unknown to those companies.

63. In addition, it is apparent both from the documents in the case file sent to the Court and from the replies of the parties to the dispute in the main proceedings to questions put by the Court at the hearing that it could be considered that the close cooperation between the companies was also demonstrated through the operation of two websites,⁵¹ the domains of which belong to only one of the co-defendants, through which, by references between those sites, the goods at issue were sold.

64. I therefore propose that the Court should rule that a finding by a court that the claims brought before it are directed against different parties who have each contributed to the same infringement of an EU trade mark in the context of a chain of infringements can be sufficient to justify its jurisdiction in respect of the co-defendants on the basis of Article 8(1) of Regulation No 1215/2012.

65. Consequently, according to the settled case-law of the Court, it will be for the referring court to carry out an assessment of the various factual elements alleged by the applicant company.⁵² At that time, it could be pointed out, first, that, at the stage of determining jurisdiction, that jurisdiction must not relate to the substance of the case or must do so only to a very limited extent.

66. Second, the court seised must ensure that the application of Article 8(1) of Regulation No 1215/2012 does not allow an applicant to make a claim against a number of defendants for the sole purpose of removing one of them from the jurisdiction of the courts of the State in which that defendant is domiciled.⁵³

⁴⁹ See, by way of comparison, judgment of the Cour de cassation (Court of Cassation, France), First Civil Chamber, of 4 July 2018 (No 17-19.384), cited by Muir Watt, H., Hashiguchi, M., Nateshan, S. and Sturua, D., op. cit., footnote 39 (p. 372). That court decided that there is a connection between the claims where, in the context of a property transaction, there is an overlap between the actions attributed to certain co-defendants, including the anchor defendant, their relationship, their respective roles and the responsibilities of two of them.

⁵⁰ The situation referred to here is that of use of the sign by the defendants in the same manner. It therefore seems unlikely that a defendant would be unaware of the infringements of his or her co-defendants. On the significance of the circumstances in which an infringer is likely to be aware that the same national law has been infringed, see Heinze, C. and Warmuth, C., 'Intellectual property and the Brussels Ibis Regulation', in Mankowski, P., *Research Handbook on the Brussels Ibis Regulation*, Edward Elgar Publishing, Cheltenham, 2020, pp. 147 to 171, in particular p. 167, available at the following internet address: <https://www.elgaronline.com/display/edcoll/9781788110785/9781788110785.00011.xml>.

⁵¹ See, in that regard, judgment in *AMS Neve and Others* (paragraphs 47 and 54).

⁵² See footnote 23 to this Opinion and the judgment in *Nintendo* (paragraph 52).

⁵³ See, in particular, judgment in *CDC Hydrogen Peroxide* (paragraphs 27 to 29 and 31 and the case-law cited).

67. In that regard, the question referred for a preliminary ruling by the referring court, as formulated,⁵⁴ provides the Court, in my view, with the opportunity to supplement its answer with clarifications relating to the anchor defendant.

C. Clarifications relating to the anchor defendant

68. The consequences of extending the jurisdiction of the court seised to other defendants, as provided for in Article 8(1) of Regulation No 1215/2012, lead me to point out that, in so far as they serve to limit the risk of abuse of forum, the checks on the close connection between the claims must necessarily relate first and foremost to the claims brought against the anchor defendant.

69. It is true that, in the absence of conditions laid down in that regulation relating to the choice of anchor defendant,⁵⁵ the Court has held that, in order to rule out the possibility that an applicant could bring a claim against multiple defendants for the sole purpose of removing one of them from the jurisdiction of the courts of the State in which he or she is domiciled, it is sufficient that there is a close connection between the claims brought against each of the defendants.⁵⁶

70. However, the Court has also held that, despite the withdrawal of the applicant's action in respect of the sole co-defendant domiciled in the Member State in which the court seised is situated, that court retains jurisdiction in respect of the other co-defendants, unless it is established that there was collusion between the applicant and said co-defendant with a view to artificially creating or maintaining the conditions for the application of Article 6(1) of Regulation No 44/2001 as of the date on which that action was brought.⁵⁷

71. Irrespective of those particular circumstances, those of the case in the main proceedings illustrate, in my view, the advantage of careful examination of the claims brought against the anchor defendant and those brought against the co-defendants, since the latter are deprived, through the choice of the applicant alone,⁵⁸ of the basic rule of international jurisdiction linked to their domicile and they dispute *the very existence* of connections between them and the anchor defendant.⁵⁹

72. In the present case, although the international jurisdiction of the referring court in Germany is not problematic due to the location of the registered office of the German company which distributes the goods in that Member State being in one *Land*, and the domicile of its managing

⁵⁴ See points 18 and 74 of this Opinion.

⁵⁵ Moreover, no hierarchy between co-defendants or claims is imposed. On the propositions in legal theory for greater rigour, see Siaplaouras, P., 'Article 8', in Requejo Isidro, M., *Brussels I bis: A Commentary on Regulation (EU) No 1215/2012*, Edward Elgar Publishing, Cheltenham, 2022, pp. 166 to 190, in particular paragraph 8.17, footnote 45 (p. 172), and Gaudemet-Tallon, H. and Ancel, M.-E., *Compétence et exécution des jugements en Europe – Règlements 44/2001 et 1215/2012, Conventions de Bruxelles (1968) et de Lugano (1998 et 2007)*, 6th edition, Librairie générale de droit et de jurisprudence, 'Droit des affaires' collection, Paris, 2018, footnote 46 (p. 395).

⁵⁶ See judgment of 11 October 2007, *Freeport* (C-98/06, EU:C:2007:595, paragraphs 52 to 54 and the case-law cited). See, on the scope of that judgment, Siaplaouras, P., *op. cit.*, paragraphs 8.37 to 8.39 (pp. 177 and 178). See, by way of comparison, Article 8(2) of Regulation No 1215/2012, which states that a person domiciled in a Member State may also be sued 'as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, *unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case*' (emphasis added).

⁵⁷ See judgment in *CDC Hydrogen Peroxide* (paragraph 33). As regards the requirement of evidence of collusion between the parties, see paragraph 32 of that judgment. In addition, some authors have pointed out that the case-law of the Court has changed. See, on that point, commentary by Siaplaouras, P., *op. cit.*, paragraph 8.40 (p. 178).

⁵⁸ See, to that effect, Muir Watt, H., Hashiguchi, M., Nateshan, S. and Sturua, D., *op. cit.*, paragraph 22 (p. 371).

⁵⁹ See point 14 of this Opinion.

director, the anchor defendant, being in another *Land*,⁶⁰ the fact that that person is being sued *in a personal capacity* and not in his capacity as the legal representative of that company deserves particular attention. That choice alone forms the basis for the international and territorial jurisdiction of the referring court.

73. It is clearly not a question of examining the application of the rules governing territorial jurisdiction or the rules governing the centralisation of litigation,⁶¹ which are not covered by either the EUTMR⁶² or Regulation No 1215/2012, but rather of pointing out that it should nevertheless be for the court seised to satisfy itself that the claims brought against the anchor defendant are based on plausible considerations.⁶³

74. By way of illustration,⁶⁴ it may be noted that, in the case in the main proceedings, as regards the legal representative of the company established in Germany, who is domiciled within the jurisdiction of the referring court, the latter has stated, in its question referred for a preliminary ruling only, that ‘infringement proceedings have also been brought’ against him.

75. That essential piece of information justifies, in my view, the fact that, as soon as the claim was lodged, it was sufficiently substantiated as to the role of the legal representative of the company being sued, since, unusually, it is the *personal liability of that legal representative* which is sought *by a third party* in the context of both an action for an injunction prohibiting the infringement of the right concerned and an action for damages.⁶⁵

76. In the absence of such information, it would be legitimate, in my view, to consider the circumstances in which the proper administration of justice justifies the jurisdiction of a court of a Member State based on the place of personal domicile of the managing director of a company being extended to include claims brought against another company and its managing director, being sued both as the legal representative of that company and in a personal capacity, which are domiciled in another Member State.

⁶⁰ See point 11 of this Opinion.

⁶¹ See judgment of 30 June 2022, *Allianz Elementar Versicherung* (C-652/20, EU:C:2022:514, paragraph 39 and the case-law cited). In that regard, it should be clarified that, as in Article 4 of Regulation No 1215/2012, Article 125(1) EUTMR designates *the courts* of the Member State in which the defendant is domiciled.

⁶² Article 123(1) EUTMR only states that ‘the Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance, which shall perform the functions assigned to them by this Regulation’.

⁶³ In line with the Court’s decisions in the judgments of 11 October 2007, *Freeport* (C-98/06, EU:C:2007:595), and of 13 July 2006, *Reisch Montage* (C-103/05, EU:C:2006:471), it is not appropriate to envisage that the assessment by the court seised will relate to the merits of the claims or their admissibility under national law. On this question, see also references in footnote 64 to this Opinion.

⁶⁴ See, for a situation in which the applicants had based their action on the fact that the accident at issue was caused by defects in the design and manufacture of the helicopter and brought proceedings against a defendant which had no connection with those criteria, judgment of the High Court of Justice (England and Wales), Queen’s Bench Division (Commercial Court), of 29 May 2020, *Senior Taxi Aereo Ejecutivo LTDA and Others v Agusta Westland S.p.A and Others*, available at the following internet address: <https://www.bailii.org/ew/cases/EWHC/Comm/2020/1348.html>. That decision has been commented on by Muir Watt, H., Hashiguchi, M., Nateshan, S. and Sturua, D., op. cit., paragraph 20 (p. 370), by James, M., ‘Claims against anchor defendant subject to merits test under Recast Brussels Regulation (High Court)’, Practical Law UK, Thomson Reuters, 10 June 2020, and by Pertoldi, A. and Mcintosh, M., ‘High Court holds claim against anchor defendant must satisfy merits test if it is to be used to establish jurisdiction against co-defendants under recast Brussels Regulation’, available at the following internet address: <https://hsfnotes.com/litigation/2020/06/30/high-court-holds-claim-against-anchor-defendant-must-satisfy-merits-test-if-it-is-to-be-used-to-establish-jurisdiction-against-co-defendants-under-recast-brussels-regulation/>. See also judgment of the Court of Cassation, France, Commercial Chamber, of 26 February 2020 (No 18-21.144), cited by Muir Watt, H., Hashiguchi, M., Nateshan, S. and Sturua, D., op. cit., paragraph 19 (p. 369), in which that court set aside and annulled the judgment of the Cour d’appel de Paris (Court of Appeal, Paris, France) of 5 June 2018, pursuant to Article 4(1) and Article 8(1) of Regulation No 1215/2012, on the ground that no claim had been brought against one of the parties sued.

⁶⁵ To my knowledge, the Court has not had to deal with such a situation. On the concept of ‘interferer’, which in German law allows the managing director to be held liable, see judgment of 22 June 2021, *YouTube and Cyando* (C-682/18 and C-683/18, EU:C:2021:503, paragraphs 120 to 123). In such cases, an action can be brought against the managing director only for an injunction prohibiting the infringement of the right concerned.

77. In such proceedings concerning the infringement of an EU trade mark having a unitary character, it appears to me to be conceivable, in practice, for the court seised to ensure that, when lodged, the application demonstrates that the choice of forum is justified by the personal involvement of a company's legal representative in the infringements, by providing evidence either that a sign identical with, or similar to, that trade mark is used in a commercial context (or of the failure to take action to prevent⁶⁶ or put an end to the infringement) or that the anchor defendant engaged in infringing activity and should reasonably have known that that was what he was doing.⁶⁷

78. In contrast, requiring that the applicant determine his choice of court by investigating who is the instigator of the infringement of the rights of the proprietor of the protected EU trade mark appears to me to go beyond the mere *ab initio* determination whether the conditions for the application of Article 8(1) of Regulation No 1215/2012 were created artificially.

79. It is true that such an option could be based, by analogy with trade mark law, on the Court's decision in *Nintendo* concerning the determination of the applicable law under Article 8(2) of Regulation No 864/2007;⁶⁸ such a determination is necessary where the applicant's action relates to various acts of infringement committed in different Member States.⁶⁹ The Court has held that the court seised must carry out an overall assessment of that defendant's conduct in order to *determine the place where the initial act of infringement* at the origin of that conduct was committed or threatened.⁷⁰

80. However, the Court has also held that the interpretation of the rules on jurisdiction was not linked to the interpretation of the provisions relating to the law applicable to actions for damages.⁷¹

81. Furthermore, at the stage of filing the claim, imposing on the applicant the obligation to investigate who is the instigator of the chain of acts of infringement would expose him to a burden of proof which is too difficult to implement and would risk undermining the purpose of the EUTMR, which is to protect the rights of a proprietor of an EU trade mark, in a context which may be very broad, according to his procedural choice.⁷²

82. Consequently, I propose that the Court add in its reply to the referring court that it will also be required to verify the evidence which made it possible to establish, at the time when the claims were lodged, that the managing director of the German company participated in the infringing acts giving rise to his personal liability.

⁶⁶ See, by analogy, judgment of 23 March 2010, *Google France and Google* (C-236/08 to C-238/08, EU:C:2010:159, paragraph 120).

⁶⁷ See, in that regard, Article 13(1) of Directive 2004/48.

⁶⁸ Under that provision, 'in the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed'.

⁶⁹ See, for a summary of the Court's interpretation, judgment of 3 March 2022, *Acacia* (C-421/20, EU:C:2022:152, paragraph 48), and, with regard to the lack of application of the Court's interpretation where the holder of the protected right chooses to bring a targeted action for acts of infringement committed in a single Member State, paragraph 49 of the same judgment.

⁷⁰ See judgment in *Nintendo* (paragraph 103).

⁷¹ See judgment in *AMS Neve and Others* (paragraphs 63 and 64).

⁷² See, by way of comparison, judgments in *AMS Neve and Others* and of 3 March 2022, *Acacia* (C-421/20, EU:C:2022:152).

V. Conclusion

83. In the light of all of the foregoing considerations, I propose that the Court of Justice answer the question referred for a preliminary ruling by the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany) as follows:

Article 8(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in conjunction with Article 122 of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark,

must be interpreted as meaning that more than one defendant, domiciled in different Member States, may be sued in the courts for the place where one of them is domiciled that are seised, in the context of infringement proceedings, of claims brought against them by the proprietor of an EU trade mark where the defendants are alleged to have infringed that trade mark in a materially identical manner through each of their acts in a supply chain. It is for the court seised to assess whether there is a risk of irreconcilable judgments resulting from separate proceedings, taking into account all the relevant material in the case file.