

Appeal brought on 23 June 2021 by the European Union Intellectual Property Office (EUIPO) against the judgment delivered on 14 April 2021 in Case T-579/19, The KaiKai Company Jaeger Wichmann GbR v European Union Intellectual Property Office (EUIPO)

(Case C-382/21 P)

(2022/C 64/08)

Language of the case: German

Parties

Appellant: European Union Intellectual Property Office (EUIPO) (represented by: D. Hanf, D. Gája, E. Markakis, V. Ruzek, acting as Agents)

Other party to the proceedings: The KaiKai Company Jaeger Wichmann GbR

Form of order sought

The appellant claims that the Court should:

- set aside in its entirety the judgment under appeal of the General Court of the European Union of 14 April 2021 in Case T-579/19, The KaiKai Company Jaeger Wichmann v EUIPO (Gymnastic or sports equipment);
- reject in its entirety the applicant's claim at first instance, brought against the contested decision of the Third Board of Appeal in Case R 573/2019-3;
- order the applicant at first instance to pay the costs incurred by the appellant in the present proceedings and in the proceedings before the General Court.

Grounds of appeal and main arguments

The appellant, EUIPO, raises, as a ground of appeal, an infringement of Article 41(1) of Regulation (EC) No 6/2002 ⁽¹⁾ which is an issue that is significant with respect to the unity, consistency or development of EU law within the meaning of Article 58a(3) of the Statute of the Court of Justice.

The judgment under appeal infringes Article 41(1) of Regulation No 6/2002, in so far as it finds, contrary to the clear and unambiguous wording of that provision, that it does not cover the case (*lacuna legis*) that priority as regards a registered Community design may be based on an earlier 'patent'. By doing so, the General Court disregarded the clear and unambiguous choice of the EU legislature laid down in that provision for patents as a basis for priority claims with regard to registered Community designs and to limit such claims exclusively to earlier designs or utility models.

In addition, the judgment under appeal infringes Article 41(1) of Regulation No 6/2002 in so far as it substitutes its express and exhaustive provision through direct recourse to Article 4 ⁽²⁾ of the Paris Convention. By doing so, the inevitable recognition of the direct effect of the rule in Article 4 of the Paris Convention infringes consistent case-law of the Court of Justice in which neither the Paris Convention or the TRIPs Agreement ⁽³⁾ are appropriate for establishing rights on which individuals can rely on the basis of EU law before the courts in the European Union.

Finally, the judgment under appeal infringes Article 41(1) of Regulation No 6/2002 in so far as it also substitutes an erroneous interpretation of its express and exhaustive provision with Article 4 of the Paris Convention. The Paris Convention does not contain any basis in law capable of substantiating the General Court's findings under which the period for claiming priority for a patent, as regards a registered Community design, may be based on a 12-month period.

The fundamental principles of the relationship between international law and EU law that were misinterpreted in the judgment under appeal, among other things serve the protection of the institutional balance and the autonomy of the EU legal order and take an important position in the constitutive EU legal order. The judgment under appeal not only has an effect on the issue of priority claims for the registration of intellectual property rights but also constitutes a precedent for all regulatory areas that fall within the scope of the TRIPs Agreement.

Appeal allowed to proceed

By order of the Court (Chamber determining whether appeals may proceed) of 10 December 2021 the appeal was granted in its entirety.

⁽¹⁾ Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1).

⁽²⁾ Paris Convention for the Protection of Industrial Property of 20 March 1883, last revised at Stockholm (Sweden) on 14 July 1967 and amended on 28 September 1979 (*United Nations Treaty Series*, Vol. 828, No 11851, p. 305; 'the Paris Convention').

⁽³⁾ Agreement on Trade-Related Aspects of Intellectual Property Rights (OJ 1994 L 336, p. 214) ('TRIPs Agreement').

Appeal brought on 23 June 2021 by Asolo LTD and WeMO Brands BV against the judgment of the General Court (Ninth Chamber) delivered on 28 April 2021 in Case T-509/19, Asolo v EUIPO

(Case C-387/21 P)

(2022/C 64/09)

Language of the case: English

Parties

Appellants: Asolo LTD and WeMO Brands BV (represented by: W. Pors, advocaat, N. Dorenbosch, advocaat)

Other party: European Union Intellectual Property Office

By order of 13 December 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Asolo LTD and WeMO Brands BV should bear their own costs.

Appeal brought on 2 August 2021 by Franz Schröder GmbH & Co. KG against the judgment of the General Court (Third Chamber) delivered on 2 June 2021 in Case T-854/19, Franz Schröder v EUIPO

(Case C-473/21 P)

(2022/C 64/10)

Language of the case: English

Parties

Appellant: Franz Schröder GmbH & Co. KG (represented by: L. Pechan, N. Fangmann, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office, RDS Design ApS

By order of 8 December 2021, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Franz Schröder GmbH & Co. KG should bear its own costs.

Appeal brought on 2 August 2021 by Franz Schröder GmbH & Co. KG against the judgment of the General Court (Third Chamber) delivered on 2 June 2021 in Case T-855/19, Franz Schröder v EUIPO

(Case C-474/21 P)

(2022/C 64/11)

Language of the case: English

Parties

Appellant: Franz Schröder GmbH & Co. KG (represented by: L. Pechan, N. Fangmann, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office, RDS Design ApS