



Reports of Cases

Case T-571/11

El Corte Inglés, SA

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Community trade mark — Opposition proceedings — Application for Community word mark CLUB GOURMET — Earlier national figurative mark CLUB DEL GOURMET, EN ... El Corte Inglés — Relative ground for refusal — No similarity between the goods and services — Article 8(1)(b) of Regulation (EC) No 207/2009 — Arguments and evidence adduced for the first time before the General Court)

Summary — Judgment of the General Court (Fourth Chamber), 20 March 2013

1. *Community trade mark — Appeals procedure — Action before the EU judicature — Jurisdiction of the General Court — Review of the lawfulness of decisions of the Boards of Appeal — Account taken by the General Court of matters of law and fact which have not been raised previously before the departments of OHIM — Exclusion*

(Council Regulation No 207/2009, Art. 65)

2. *Community trade mark — Procedural provisions — Examination of the facts of the Office's own motion — Opposition proceedings — Examination restricted to the submissions of the parties — Obligation on the parties to state facts and evidence in support — Rules of national law — Included*

(Council Regulation No 207/2009, Art. 76)

1. See the text of the decision.

(see para. 25)

2. Determining and interpreting rules of national law, in so far as so doing is essential to the activity of EU institutions, is a matter of establishing the facts, not applying the law. Indeed, the only law which is applied is EU law. Therefore, while it is true that Article 65(2) of Regulation No 207/2009 on the Community trade mark must be construed as meaning that rules of law whose infringement may give rise to an action before the General Court may be the province of national or EU law, it is, however, only EU law which falls within the area of law, in which the maxim *iura novit curia* applies, whereas national law is an issue of fact, where facts must be adduced and the requirements of the burden of proof apply, and the content of national law must be demonstrated where necessary by the production of evidence. It follows that, as a rule, in the context of a procedure before the EU institutions, it is for the party relying on national law to show that it supports his claims.

Admittedly, the General Court has qualified that principle, holding that the Office for Harmonisation in the Internal Market (Trade Marks and Designs) must, of its own motion and by whatever means considered appropriate, obtain information about the national law of the Member State concerned,

where such information is necessary to assess the applicability of the ground for refusal of registration in question and, in particular, the correctness of the facts pleaded or the probative value of the documents lodged. However, it is only where OHIM already has information relating to national law, either in the form of claims as to its meaning, or in the form of evidence submitted and whose probative value has been adduced, that it is required, if necessary, to obtain of its own motion information about national law.

(see paras 35, 38, 39, 41)