

Request for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium) lodged on 13 August 2013 — Belgacom SA v Commune d’Etterbeek

(Case C-454/13)

(2013/C 313/22)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicant: Belgacom SA

Defendant: Commune d’Etterbeek

Question referred

Must Articles 12 and 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ('Authorisation Directive')⁽¹⁾ be interpreted as precluding the introduction, for budgetary purposes, by legislation of a national or local authority, of a tax on mobile communications infrastructures, installed on public or private property, used to carry on activities provided for in the general authorisation?

⁽¹⁾ OJ 2002 L 108, p. 21.

Appeal brought on 27 August 2013 by Repsol, SA against the judgment of the General Court (Seventh Chamber) delivered on 27 June 2013 in Case T-89/12 Repsol YPF v OHIM — Ajuntament de Roses ®

(Case C-466/13 P)

(2013/C 313/23)

Language of the case: Spanish

Parties

Appellant: Repsol, SA (represented by: L. Montoya Terán and J. Devaureix, abogados)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court of Justice should:

- set aside in its entirety the judgment of the General Court of 27 June 2013 in Case T-89/12, notified on 28 June 2013;
- uphold all of the forms of order sought at first instance;
- order the respondent to pay the costs.

Ground of appeal and main arguments

1. In relation to a certain practice of OHIM in registering marks and of the case-law of the General Court, corrective action is required which applies in an effective manner the reciprocal relationship between the distinctive character of an earlier mark and its scope of protection.
2. In the judgment under appeal, the General Court contradicted itself in its reasoning and the conclusions which it reached in relation to the lack of similarity between the signs (it considered that they have more differences than similarities, though recognised that they are similar) and the weak or lack of distinctiveness of the earlier mark (it considered that it was a weak mark, but failed to take account of that weakness when assessing whether there was a likelihood of confusion).
3. The General Court ignored the fact that the essential and distinctive characteristics of the opposing mark (capital letter 'R' inside a circle) cannot be monopolised by any third party. Consequently, the requirement that usual signs be made available on the market has not been respected.
4. The General Court failed to take account of judgments of the Spanish Supreme Court in similar cases. Account should be taken of those cases since they adopt the point of view of the relevant consumer, namely the Spanish consumer.
5. It is clear from the above that the judgment of the General Court is vitiated by legal errors. It must thus be set aside in accordance with the form of order sought.

Appeal brought on 16 September 2013 by GRE Grand River Enterprises Deutschland GmbH against the judgment of the General Court (Third Chamber) delivered on 3 July 2013 in Case T-78/12 GRE Grand River Enterprises Deutschland GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-496/13 P)

(2013/C 313/24)

Language of the case: German

Parties

Appellant: GRE Grand River Enterprises Deutschland GmbH (represented by: I. Memmler and S. Schulz, Rechtsanwältinnen)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Villiger Söhne GmbH

Form of order sought

The appellant claims that the Court should:

- Set aside the decision of the General Court of 3 July 2013 in Case T-78/12 and annul the decision of the First Board of Appeal of OHIM of 1 December 2011 in Case R 2109/2010-1;
- Order the respondent to pay the costs.

Grounds of appeal and main arguments

The appellant puts forward as its single ground of appeal the incorrect interpretation and application of Article 8(1)(b) of Regulation (EC) No 207/2009⁽¹⁾ and failure to have regard to the rules of evidence in the application of that provision.

In support of that ground of appeal the appellant submits:

In comparing the signs the General Court did not correctly apply the global assessment doctrine because it made a sweeping comparison of the elements 'LIBERTAD' and

'LIBERTE' and in doing so left out all the other elements of the marks.

In particular, the General Court would, if it had applied the global assessment doctrine correctly, have had to attach more importance to some of the other elements of the marks at issue, *inter alia* the combination of colours in the disputed mark and the opposing mark and the description 'LA' in the opposing mark and 'brunes' in the disputed mark.

In addition, the General Court incorrectly applied the principles set out by the Court of Justice in respect of conceptual similarity as it did not take sufficient account of the different languages of the marks.

Furthermore, the General Court failed to have regard to the rules of evidence set out in the Rules of Procedure in that it made assumptions with regard to the pronunciation of the mark 'LA LIBERTAD' without evidence and based the decision on them.

All in all, the General Court thus came to an incorrect conclusion.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).