

— order the Defendant and Scooters India Limited to bear the costs of the proceedings.

Pleas in law and main arguments

The appellant bases its appeal on two pleas, alleging infringement of Article 50 (1) (a) of Council Regulation (EC) N° 207/2009⁽¹⁾, of 26 February 2009, on the Community trade mark, and, secondarily, an infringement of procedural rules by the General Court by not dismissing the application for annulment brought by Scooters India Limited to the extent it found the application unfounded.

Scooters India Limited is the proprietor of a Community trade mark LAMBRETTA registered, inter alia, for ‘vehicles; apparatus for locomotion by land, air or water’ in class 12 of the International Classification. The appellant had brought an action to declare the mark revoked, inter alia, for the goods in class 12, on the basis of Article 50 (1) (a) of Regulation 207/2009 on grounds of absence of genuine use. This request was granted by the Cancellation Division of OHIM. The appeal brought by Scooters India Limited was dismissed by the First Board of Appeal of OHIM as unfounded. In the contested judgment, the General Court annulled the decision of the First Board of Appeal of OHIM. The General Court held that OHIM was obliged, on grounds of legal certainty, to take into accounts goods in class 12 for which genuine use had been alleged, even though these goods did not fall within the definition of the goods for which the mark was registered.

The appellant submits that the General Court erred in law by requiring OHIM to take into account use of the mark LAMBRETTA alleged to have been made for certain goods, such as spare parts, even though these goods do not fall within the definition of the goods for which the mark LAMBRETTA is registered in class 12. The appellant asserts that under a proper interpretation of Article 50 (1) (a) of Regulation 207/2009 only use made for goods falling within the definition of the indications in the registration can be taken into account. The appellant asserts that the General Court was bound to apply the judgment of the Court of Justice in Case C-307/10, Chartered Institute of Patent Attorneys (IP TRANSLATOR).

The appellant therefore contends that the contested judgment must be annulled and the application for annulment of the contested decision of the Board of Appeal must be dismissed.

The appellant further submits, as a secondary plea, that, even it would be accepted that OHIM was under an obligation to take into account goods in class 12 for which genuine use was alleged to have been made, the General Court committed a procedural violation by annulling the contested decision without any limitation. After having accepted in the contested judgment that the proprietor of the mark LAMBRETTA had not proved genuine use of the mark for any goods for which it was registered (but obliging OHIM to take into account nevertheless the use made for other goods in the same class), the General Court was required to confirm the contested decision to the extent that the Board of Appeal had found no genuine use for the goods for which the mark was registered.

⁽¹⁾ OJ L 78, p. 1.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 17 December 2014 — Patrick Breyer v Bundesrepublik Deutschland

(Case C-582/14)

(2015/C 089/05)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Patrick Breyer

Defendant: Bundesrepublik Deutschland

Questions referred

1. Must Article 2(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ — the Data Protection Directive — be interpreted as meaning that an Internet Protocol address (IP address) which a service provider stores when his website is accessed already constitutes personal data for the service provider if a third party (an access provider) has the additional knowledge required in order to identify the data subject?
2. Does Article 7(f) of the Data Protection Directive preclude a provision in national law under which a service provider may collect and use a user's personal data without his consent only to the extent necessary in order to facilitate, and charge for, the specific use of the telemedium by the user concerned, and under which the purpose of ensuring the general operability of the telemedium cannot justify use of the data beyond the end of the particular use of the telemedium?

⁽¹⁾ OJ 1995 L 281, p. 31.

Appeal brought on 22 December 2014 by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) against the judgment of the General Court (Sixth Chamber) delivered on 24 October 2014 in Case T-543/12 Grau Ferrer v OHIM — Rubio Ferrer (Bugui Va)

(Case C-597/14 P)

(2015/C 089/06)

Language of the case: Spanish

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Palmero Cabezas and A. Folliard-Montguiral, Agents)

Other parties to the proceedings: Xavier Grau Ferrer, Juan Cándido Rubio Ferrer and Alberto Rubio Ferrer

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal;
- deliver a new judgment on the substance of the case, dismissing the action brought against the contested decision, or refer the case back to the General Court;
- order the applicant before the General Court to pay the costs.

Pleas in law and main arguments

1. The General Court infringed Article 76(2) of the CTR ⁽¹⁾ and the third paragraph of Rule 50(1) of Regulation No 2868/95 ⁽²⁾ by considering that those provisions were applicable in the present case on the basis of incorrect assessment criteria.