

2. Are Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union to be interpreted as meaning that a Member State of the European Union must reject an application for extradition emanating from a non-Member State concerning an EU citizen residing in that Member State where the criminal proceedings from which the application for extradition arose and the decision rendered in absentia in the non-Member State did not respect the minimum standard of international law and the non-mandatory principles of the public order of the European Union (*ordre public*) or the right to a fair trial?
3. Lastly, is Article 50 of the Charter of Fundamental Rights of the European Union or the principle of *ne bis in idem* secured in the case-law of the Court of Justice to be interpreted as precluding further prosecution by a non-Member State in the case of a first conviction in the non-Member State followed by the discontinuing of proceedings in a Member State of the European Union for lack of real grounds justifying prosecution?
4. In the event that one of the first three questions is answered in the affirmative, is, inter alia, Article 6 of the Charter of Fundamental Rights of the European Union ('Right to liberty') to be interpreted as meaning that an EU citizen may not be held in custody for extradition where a non-Member State makes such an application for extradition?

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**Appeal brought on 9 September 2015 by Westermann Lernspielverlag GmbH against the judgment of the General Court (Second Chamber) delivered on 15 July 2015 in Case T-333/13: Westermann Lernspielverlag GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case C-482/15 P)**

(2015/C 406/17)

*Language of the case: English*

#### **Parties**

*Appellant:* Westermann Lernspielverlag GmbH (represented by: A. Nordemann and M. C. Maier, Rechtsanwälten)

*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 should:

- annul the judgment of the General Court in Case T-333/13 of 15 July 2015,
- remit the case back to the General Court for further consideration,
- order the Defendant to bear the costs,

Alternatively, should the Court come to the conclusion that the judgment of the General Court of 15 July 2015 has become devoid of purpose, due to the fact that the Other Party's mark on which the opposition was based has been revoked in its entirety with effect of 13 June 2013, we kindly request the Court to:

- declare that the present action has become devoid of purpose and that there is no longer any need to adjudicate on it.

#### **Pleas in law and main arguments**

The present Action is based on the following grounds:

1. infringement of the principle of the rights of defense, in particular, of the right to be heard,

2. infringement of the principle of the right to a fair hearing and trial,
3. infringement of Article 69 (c) and (d) of the Rules of Procedure of the General Court,
4. infringement of Article 8(1)(b) CTMR <sup>(1)</sup>.

The Applicant is of the opinion that its fundamental right to be heard has not been respected by the General Court as (1) the Registrar of the General Court informed the Applicant on 3 July 2015 that the Applicant's submission — informing the General Court that the trademark forming the basis of the opposition *ex tunc* no longer exists — could not be taken into consideration and (2) as the judgment of the General Court issued on 15 July 2015 did not mention at all the fact that the other party's trade mark on which the opposition was mainly based no longer existed at the time of the judgment.

The Applicant is of the opinion that its fundamental right to a fair trial has been violated by the General Court as (1) the General Court denied the Applicant's request for a stay of the proceedings and consequently ignored the fact, that the request for revocation filed by the Applicant on 13 June 2013, as well as the cancellation request based on absolute ground filed by the Applicant on 5 January 2015 against the other party's trade mark, are legitimate means of defense which impact directly on the outcome of the present proceedings and (2) as the General Court refused to take the Applicant's observations of 12 June 2015 into consideration.

The Applicant is of the opinion that the General Court infringed Article 69 (c) and (d) of the Rules of Procedure of the General Court when it rejected both requests by the Applicant to stay the proceedings without any explanation, although in both cases the Defendant did not have any objections against such a stay of the proceedings and the Applicant provided substantial reasons why a stay of the proceedings appeared necessary.

The Applicant is of the opinion that the General Court infringed Article 8 (1) (b) CTMR as it erred in law and distorted relevant facts of the case since the assessment of likelihood of confusion was based on a mark which was revoked on 22 May 2015, with effect from 13 June 2013; thus before the Applicant filed its action before the General Court on 17 June 2013, and before the General Court issued its decision. Consequently, at the time of the judgment on 15 July 2015, the other party's Community trade mark No. 003915121, word/device:, could neither be taken into consideration nor could any conclusions be based on said mark.

Finally, the Applicant requests the Court, should it conclude that the judgment of the General Court of 15 July 2015 has become devoid of purpose, due to the fact that the other party's mark on which the opposition was based has been revoked in its entirety with effect from 13 June 2013, to declare that the present action has become devoid of purpose and that there is no longer any need to adjudicate on it.

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

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**Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 17 September 2015 — CTL Logistics GmbH v DB Netz AG**

**(Case C-489/15)**

**(2015/C 406/18)**

*Language of the case: German*

**Referring court**

Landgericht Berlin