In order to analyse properly — that is to say, in accordance with logic and law — the similarity of the signs compared, it is indispensable to first contextualise that analysis by placing it in the relevant market, so as to adopt the perspective of the average consumer in the specific relevant territory. According to the appeal, the judgment under appeal, far from adopting a contextualised perspective, failed to take into account: (i) The acknowledged maximal degree of distinctiveness of the element DONUT (or DOUGHNUTS in its phonetic form) in the relevant territory, and (ii) the dominant character which the average consumer in the relevant territory will inevitably assign to the element DOUGHNUTS (or DONUTS) when it appears integrated in any composite mark, such as the mark 'Krispy Kreme DOUGHNUTS'.

Second ground of appeal, linked to the first, alleging that the General Court did not properly consider the well-known (and reputed) character of the earlier marks of PANRICO, S.A.

The judgment under appeal did not taken into account, in all respects, the importance of the well-known and reputed character of the earlier marks in evaluating the likelihood of confusion. That is particularly relevant since it is settled case-law that the more distinctive the earlier mark, the greater the likelihood of confusion, particularly as regards marks with a reputation.

Third ground of appeal, alleging an error of law in that the judgment under appeal disregarded the criteria developed by the case-law on the evaluation of the likelihood of confusion, including that of association

In particular:

— the erroneous assessment of the similarity of the signs at issue, by (i) failing to attribute to the element DOUGHNUTS the dominant character which it enjoys in conjunction with the mark 'Krispy Kreme DOUGHNUTS', and (ii) failing to assess correctly the similarity between the element 'DOUGHNUTS' and the earlier marks DONUT and/or DONUTS;

— the erroneous assessment of the similarity of the goods and services covered by the marks at issue.

Fourth ground of appeal alleging an error of law in that the General Court failed to find undue use of the distinctive character of the earlier marks DONUT and DONUTS, and a clear prejudice to those marks.

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 14 December 2015 — Lohmann & Rauscher International GmbH & Co. KG v BIOS Naturprodukte GmbH

(Case C-662/15)

(2016/C 118/05)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant and appellant: Lohmann & Rauscher International GmbH & Co. KG

Defendant and respondent: BIOS Naturprodukte GmbH

Question referred

Are Article 1(2)(f), Article 11, point 13 of Annex I and the last indent of point 3 of Annex VII [to Council Directive 93/42/EEC of 14 June 1993 concerning medical devices] ([1]) to be interpreted as meaning that a further conformity assessment procedure is required for the marketing of a Class I medical device, which has been made subject to a conformity assessment procedure by the manufacturer and lawfully bears the CE marking affixed by the manufacturer, where the information relating to the central pharmaceutical number (Pharmazentralnummer) on the outer packaging of the medical device has been concealed by a sticker which provides the importer's details and the central pharmaceutical number granted to that importer, the other information remaining visible?

([1]) OJ 1993 L 169, p. 1.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 17 December 2015 — Asklepios Kliniken Langen-Seligenstadt GmbH v Ivan Felja

(Case C-680/15)

(2016/C 118/06)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant: Asklepios Kliniken Langen-Seligenstadt GmbH

Respondent: Ivan Felja

Questions referred

I.

1. Does Article 3 of Council Directive 2001/23/EC of 12 March 2001 ([1]) preclude a provision of national law which provides that, in the event of a transfer of an undertaking or business, all conditions of employment agreed between the transferor and the employee, individually and in the exercise of their freedom of contract, in the contract of employment transfer to the transferee unaltered, as if he had himself agreed them in an individual contract with the employee, where national law provides for both consensual and unilateral adjustments by the transferee?

2. If Question 1 is answered in the affirmative, either generally or for a defined group of individually agreed conditions of employment in the employment contract between the transferor and employee:

   Does the application of Article 3 of Directive 2001/23/EC have the effect that certain terms of the contract of employment between the transferor and the employee which have been agreed in the exercise of freedom of contract are to be excluded from being transferred unaltered to the transferee, and are to be adjusted simply by reason of the transfer of the undertaking or business?

3. If, according to the Court of Justice's answers to Questions 1 and 2, an individual provision which has been agreed in an individual contract, under which certain provisions in a collective agreement are, dynamically and in the exercise of freedom of contract, incorporated into the employment contract, is not transferred unaltered to the transferee:

   a) Does this apply also where neither the transferor nor the transferee is party to a collective agreement or is affiliated to such a party, that is, where, even prior to the transfer of the undertaking or business, the provisions in the collective agreement would not have been applicable to the employment relationship with the transferor in the absence of the term referring to them in the agreement made, in the exercise of freedom of contract, in the contract of employment?