

In his second ground of appeal, the appellant argues that the statement of reasons for the finding that the word element 'Bullerjan', added to the mark at issue when in use, has a distinctive character is contradictory and inadequate. The judgment under appeal, he contends, failed to state what degree of distinctiveness the General Court attributed to the added word element. Without a finding as to the degree of distinctiveness of the added element, it is impossible to make a finding as to whether the distinctiveness of the mark at issue had been influenced by that element. The judgment under appeal is also, he argues, contradictory in that regard. The General Court thus, on the one hand, took the view that the word element makes it easier to determine the commercial origin of the goods, while, on the other hand, it stated that that element has no effect on the distinctiveness of the three-dimensional mark at issue. A facilitation of determination of commercial origin and an absence of effect on the degree of distinctiveness are, however, mutually exclusive.

In his third ground of appeal, the appellant argues that an incorrect legal test was applied in determining the distinctiveness of the three-dimensional mark at issue. For the purpose of determining the degree of distinctiveness of a three-dimensional mark, the protected shape has to be compared with the shapes available on the market. The General Court, however, bases its reasoning, not on the available shapes, but on 'the shape of an oven in general'. Such an average shape of an oven does not, however, exist.

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**Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 19 December 2017 — Anke Hartog v British Airways plc**

(Case C-711/17)

(2018/C 134/18)

*Language of the case: German*

**Referring court**

Amtsgericht Hamburg

**Parties to the main proceedings**

*Applicant:* Anke Hartog

*Defendant:* British Airways plc

**Question referred**

Must the condition laid down in Article 3(2)(a) for the applicability of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 <sup>(1)</sup> be interpreted as meaning that passengers, who have a confirmed reservation, have 'present[ed] themselves for check-in' if, where no time is indicated, they have joined the queue for the check-in desks used by the air carrier for the check-in in question no later than 45 minutes before the published departure time?

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<sup>(1)</sup> OJ 2004 L 46, p. 1.

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**Request for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Kielcach (Poland) lodged on 29 December 2017 — ECO-WIND Construction S.A., established in Warsaw v Samorządowe Kolegium Odwoławcze w Kielcach**

(Case C-727/17)

(2018/C 134/19)

*Language of the case: Polish*

**Referring court**

Wojewódzki Sąd Administracyjny w Kielcach