

Official Journal of the European Union

C 121



English edition

Information and Notices

Volume 66

3 April 2023

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
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COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the *Official Journal of the European Union*

(2023/C 121/01)

Last publication

OJ C 112, 27.3.2023

Past publications

OJ C 104, 20.3.2023

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OJ C 83, 6.3.2023

OJ C 71, 27.2.2023

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OJ C 54, 13.2.2023

These texts are available on:

EUR-Lex: <http://eur-lex.europa.eu>

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Ninth Chamber) of 16 February 2023 (request for a preliminary ruling from the Tribunal Judicial da Comarca de Coimbra — Juízo do Trabalho da Figueira da Foz — Portugal) — KI v YB, JN

(Case C-483/22, ⁽¹⁾ KI (Transfer of a Portuguese notary's office))

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Requirement to present the factual and regulatory context of the dispute in the main proceedings — Lack of sufficient information — Manifest inadmissibility)

(2023/C 121/02)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca de Coimbra — Juízo do Trabalho da Figueira da Foz

Parties to the main proceedings

Applicant: KI

Defendants: YB, JN

Operative part of the order

The request for a preliminary ruling made by the Tribunal Judicial da Comarca de Coimbra — Juízo do Trabalho da Figueira da Foz (District Court, Coimbra — Employment Tribunal, Figueira da Foz, Portugal) by decision of 7 July 2021 is manifestly inadmissible.

⁽¹⁾ Date of filing: 19.7.2022.

Action brought on 21 February 2022 — European Commission v Hungary

(Case C-123/22)

(2023/C 121/03)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: A. Azéma, L. Grønfeldt, A. Tokár and J. Tomkin, Agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should:

1. declare that Hungary has failed to fulfil its obligations under Article 260(1) TFEU, in not taking all the necessary measures to comply with the judgment delivered by the Court on 17 December 2020 in Case C-808/18, *Commission v Hungary (Reception of applicants for international protection)*;
2. order Hungary to pay the Commission a lump sum of EUR 5 468,45 daily — in the total minimum amount of EUR 1 044 000,00 — from the date on which the Court delivered its judgment in Case C-808/18 until the date on which the defendant complies with that judgment or the date on which judgment is given in the present case, if the latter occurs first;
3. in the event that the failure to fulfil obligations referred to in the first head of claim continues until judgment is given in present case, order Hungary to pay the Commission a daily penalty payment of EUR 16 393,16 from the date on which judgment is given in the present case until the date on which the defendant complies with the judgment of the Court in Case C-808/18, and
4. order Hungary to pay the costs of the proceedings.

Pleas in law and main arguments

In its judgment of 17 December 2020 in Case C-808/18, *Commission v Hungary (Reception of applicants for international protection)*, the Court declared that Hungary's asylum legislation was incompatible with EU law in various respects. Although Hungary has taken certain measures to comply with the contents of that judgment — above all, it has closed the so-called transit zones which it had established at the Hungarian-Serbian border — the Commission considers that those measures are insufficient to comply with that judgment.

Request for a preliminary ruling from the Juzgado de Primera Instancia n.º 2 de León (Spain) lodged on 24 November 2022 — Investcapital Ltd v G.H.R.

(Case C-724/22, Investcapital)

(2023/C 121/04)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia n.º 2 de León

Parties to the main proceedings

Applicant: Investcapital Ltd

Defendant: G.H.R.

Questions referred

1. Does Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ⁽¹⁾ preclude a court, when enforcing an instrument stemming from an order for payment procedure in which a review of unfair terms has already been carried out, from carrying out of its own motion a further review of unfair terms?

If not, does Article 7 of Directive 93/13/EEC preclude the court from asking the party seeking enforcement to provide such information as may be necessary to determine the origin of the amount of the debt, including the principal and, as the case may be, any interest, contractual penalties and other sums, in order to review of its own motion whether those terms are unfair? Does Article 7 of that directive preclude national legislation which does not provide for the possibility of requesting such additional documents during the enforcement procedure?

2. Does the principle of effectiveness of EU law preclude national procedural legislation which prevents or does not provide for a second review of unfair terms by the court of its own motion in the procedure for enforcing a procedural instrument stemming from an order for payment procedure, [if] it is considered that unfair terms may be present on account of an imperfect or incomplete review of unfairness in the prior procedure during which that enforceable instrument was issued?

If so, is the fact that the court may ask the party seeking enforcement to provide such documents as may be necessary to determine the heads of claim under the contract that make up the amount of the debt, in order to review whether any of the terms are unfair, consistent with the principle of effectiveness of EU law?

(¹) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 1 December 2022 — DISA SUMINISTROS Y TRADING, S. L. U. (DISA) v Agencia Estatal de la Administración Tributaria

(Case C-743/22, DISA)

(2023/C 121/05)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: DISA SUMINISTROS Y TRADING, S. L. U. (DISA)

Respondent: Agencia Estatal de la Administración Tributaria

Question referred

Must [Council] Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, (¹) in particular Article 5 thereof, be interpreted as precluding a national provision, such as Article 50ter of Ley 38/1992 de Impuestos Especiales (Law 38/1992 on excise duties) of 28 December 1992, which authorised the autonomous communities to set differentiated rates of the excise duties on mineral oils for each territory in respect of the same product?

(¹) OJ 2003 L 283, p. 51.

Request for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Palma de Mallorca (Spain) lodged on 16 December 2022 — Luis Carlos and Others v Air Berlín PLC & CO Luftverkehrs KG, Sucursal en España

(Case C-765/22, Air Berlín)

(2023/C 121/06)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 de Palma de Mallorca

Parties to the main proceedings

Applicants: Luis Carlos, Severino, Isidora, Angélica, Paula, Luis Francisco, Delfina

Defendant: Air Berlín PLC & CO Luftverkehrs KG, Sucursal en España

Question referred

In the qualified universal proceedings outlined by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings,⁽¹⁾ in which it is permissible to open secondary proceedings that apply exclusively to assets situated in the State where the proceedings are opened, can Article 35 and Article 7(1) [and] (2)(g) and (h) in conjunction with recital 72 be interpreted as meaning that application of the law of the State of the opening of the secondary proceedings 'to the treatment of claims arising after the opening of insolvency proceedings' relates to claims arising after the opening of the main proceedings rather than of the secondary proceedings?

⁽¹⁾ OJ 2015 L 141, p. 19.

**Request for a preliminary ruling from the Commissione tributaria provinciale di Genova (Italy)
lodged on 19 December 2022 — OSTP Italy Srl v Agenzia delle Dogane e dei Monopoli, Ufficio delle
Dogane di Genova 1, Agenzia delle Dogane e dei Monopoli, Ufficio delle dogane di Genova 2 and
Agenzia delle Entrate — Riscossione — Genova**

(Case C-770/22)

(2023/C 121/07)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Genova

Parties to the main proceedings

Applicant: OSTP Italy Srl

Defendants: Agenzia delle Dogane e dei Monopoli, Ufficio delle Dogane di Genova 1, Agenzia delle Dogane e dei Monopoli, Ufficio delle dogane di Genova 2, Agenzia delle Entrate — Riscossione — Genova

Question referred

May Articles 43, 44 and 45 of Regulation (EU) No 952/2013⁽¹⁾ be interpreted as precluding the compatibility with EU law of national legislation which provides for the immediate enforceability of judgments delivered at first instance by national courts, which have the effect of annulling, in whole or in part, tax payment orders relating to the European Union's own resources?

⁽¹⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (recast) (OJ 2013 L 269, p. 1).

**Request for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Palma de Mallorca (Spain)
lodged on 19 December 2022 — Victoriano and Others v Air Berlín PLC & CO Luftverkehrs KG,
Sucursal en España, Air Berlín PLC & CO Luftverkehrs KG**

(Case C-772/22, Air Berlín)

(2023/C 121/08)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 de Palma de Mallorca

Parties to the main proceedings

Applicants: Victoriano, Bernabé, Jacinta, Sandra, Patricia, Juan Antonio, Verónica

Defendants: Air Berlín PLC & CO Luftverkehrs KG, Sucursal en España, Air Berlín PLC & CO Luftverkehrs KG

Questions referred

In the main qualified universal proceedings outlined by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings,⁽¹⁾ in which it is permissible to open secondary proceedings that apply exclusively to assets situated in the State where the proceedings are opened:

- (1) May Article 3(2) and Article 34 of the Regulation be interpreted as meaning that the assets situated in the State of the opening of secondary proceedings, to which the effects of the proceedings are restricted, are only the assets existing at the time the secondary proceedings are opened and not those that existed when the main proceedings were opened?
- (2) May Article 21(1) of Regulation (EU) 2015/848 be interpreted as meaning that the decision of the insolvency practitioner in the main insolvency proceedings to remove assets, without requesting the opening of secondary proceedings or avoiding the opening of such proceedings by offering a unilateral undertaking under Articles 36 and 37, is in conformity with the power to remove the debtor's assets from the territory of the Member State in which they are situated where it is apparent to that practitioner that there are local creditors with claims arising from employment contracts that have been recognised by judgments and a protective attachment of assets ordered by an employment court of that Member State?
- (3) May Article 21(2) of Regulation (EU) 2015/848 be interpreted as meaning that the power to bring actions to set aside in the interests of creditors conferred on the insolvency practitioner in the secondary insolvency proceedings applies to a situation such as that described, in which it is sought to revoke an act performed by the insolvency practitioner appointed in the main insolvency proceedings?

⁽¹⁾ OJ 2015 L 141, p. 19.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale della Liguria (Italy) lodged on 16 January 2023 — FA.RO. di YK & C. Sas v Agenzia delle Dogane e dei Monopoli

(Case C-16/23)

(2023/C 121/09)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Liguria

Parties to the main proceedings

Appellant: FA.RO. di YK & C. Sas

Respondent: Agenzia delle Dogane e dei Monopoli

Questions referred

1. Must Article 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market⁽¹⁾ and Articles 49, 56 and 106(2) TFEU be interpreted as precluding national legislation, such as that at issue in the main proceedings, which imposes restrictions on the authorisation of tobacco product outlets according to a minimum geographical distance between providers and according to the resident population?
2. Must Article 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market and Articles 49, 56 and 106(2) TFEU be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the authorisation of tobacco product outlets subject to compliance with pre-established criteria relating to the minimum geographical distance between suppliers and to the resident population, without allowing the competent public authority to assess other objective factual circumstances that demonstrate, even where the above-mentioned conditions are not satisfied[,], a need for a service in the case at issue?

⁽¹⁾ OJ 2006 L 376, p. 36.

Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 26 January 2023 — Keva, Landskapet Ålands pensionsfond and Kyrkans Centralfond v Skatteverket

(Case C-39/23, Keva and Others)

(2023/C 121/10)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicants: Keva, Landskapet Ålands pensionsfond and Kyrkans Centralfond

Respondent: Skatteverket

Questions referred

1. Does the fact that dividends paid by domestic companies to foreign public pension institutions are subject to withholding tax, whereas the corresponding dividends are not taxed if they accrue to the own State through its general pension funds, constitute such negative differential treatment that it entails a restriction of the free movement of capital prohibited, in principle, by Article 63 TFEU?
2. If Question 1 is answered in the affirmative, what are the criteria that should be taken into account when assessing whether a foreign public pension institution is in a situation which is objectively comparable to that of the own State and its general pension funds?
3. Can a possible restriction be regarded as being justified by overriding reasons of public interest?

Appeal brought on 8 February 2023 by Westfälische Drahtindustrie GmbH and Others against the judgment of the General Court (Seventh Chamber, Extended Composition) delivered on 23 November 2022 in Case T-275/20, Westfälische Drahtindustrie GmbH and Others v European Commission

(Case C-70/23 P)

(2023/C 121/11)

Language of the case: German

Parties

Appellants: Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG, Pampus Industriebeteiligungen GmbH & Co. KG (represented by: O. Duys and N. Tkatchenko, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- declare invalid the Commission's letter of 2 March 2020, in which the deputy Commission Director-General for Budget required Westfälische Drahtindustrie GmbH to pay an amount of EUR 12 236 931,69 to the Commission;

- consequently, hold that the payments made by Westfälische Drahtindustrie GmbH to the Commission between 29 June 2011 and 16 June 2015 in the amount of EUR 16 400 000 plus compensatory interest which has become due in the amount of EUR 1 420 610, making a combined total of EUR 17 820 610, are to be taken into account in respect of the standalone fine imposed by the General Court in the judgment of 15 July 2015, *Westfälische Drahtindustrie and Others v Commission* (T-393/10, EU:T:2015:515), as from 15 July 2015 and that as a result of the payment of 17 October 2019 of EUR 18 149 636,24 that fine has already been paid in full;
- order the Commission to pay to Westfälische Drahtindustrie GmbH an amount of EUR 1 633 085,17 together with compensatory interest with effect from 17 October 2019 until reimbursement in full of the corresponding amount owed;
- in the alternative, set aside the judgment under appeal and order the Commission to pay compensation to all three appellants in the amount of EUR 12 236 931,69 in settlement of the amount claimed from Westfälische Drahtindustrie GmbH by the Commission letter of 2 March 2020 in the amount of EUR 12 236 931,36 and to pay to Westfälische Drahtindustrie GmbH the amount of the overpayment being EUR 1 633 085,17 together with compensatory interest since 17 October 2019 until reimbursement in full of the amount owed;
- in the alternative to the heads of claim appearing in the three indents above, refer the case back to the General Court for a ruling;

and in any event
- order the Commission to pay the costs incurred in the proceedings at first instance and on appeal.

Grounds of appeal and main arguments

The appellants put forward three grounds of appeal:

1. The judgment under appeal infringes EU law and is vitiated by contradictory reasoning. It is true that the General Court also recognises the substantive amendment and substitution of the fine imposed on the appellants by the Commission in 2010/2011. Notwithstanding the clear nature of the terms of the operative part to the contrary and the General Court's findings in the judgment of 15 July 2015, it is argued in the judgment under appeal, however, that the unlawful Commission decision issued in 2010/2011 and the unreasonable fine imposed by that decision remained unchanged and identical.
2. In the judgment under appeal, the General Court failed to have regard for the legal consequences of the judgment of 15 July 2015. The General Court infringed the principle under which the EU institutions were obliged to remove the specified consequences following the delivery of the judgment of 15 July 2015.
3. In the judgment under appeal, the General Court infringed the fundamental procedural right of the appellants to effective judicial protection in the form of their claim to a fair hearing. The General Court rejected all the pleas with the same reasoning that the fine revised in the judgment of 15 July 2015 was not a new fine. The decision taken in the judgment under appeal as to the legal nature of the fines is questionable. Furthermore, there is no close connection between the various pleas such as to justify their rejection by means of a single legal argument. Rather, the General Court should have undertaken an independent and careful examination of all the pleas. It is not apparent that the General Court provided sufficient reasons for the rejection of all the pleas in the judgment under appeal.

Appeal brought on 17 February 2023 by WhatsApp Ireland Ltd against the order of the General Court (Fourth Chamber, Extended Composition) delivered on 7 December 2022 in Case T-709/21, WhatsApp Ireland v European Data Protection Board

(Case C-97/23 P)

(2023/C 121/12)

Language of the case: English

Parties

Appellant: WhatsApp Ireland Ltd (represented by: H.-G. Kamann, Rechtsanwalt, F. Louis and A. Vallery, avocats, P. Nolan, B. Johnston and C. Monaghan, Solicitors, P. Sreenan and D. McGrath, Senior Counsel, C. Geoghegan and E. Egan McGrath, Barrister-at-Law)

Other party to the proceedings: European Data Protection Board (EDPB)

Form of order sought

The appellant claims that the Court should:

- set aside the order under appeal;
- declare the applicant in case T-709/21 admissible;
- refer the case back to the General Court for it to give judgment; and
- order the respondent to pay the costs of the appeal proceedings.

Pleas in law and main arguments

In support of its appeal, the WhatsApp relies on two pleas in law.

In its first plea in law, WhatsApp submits that the General Court erred in its interpretation of the concept of an 'act open to challenge' and the Court of Justice's case-law under Article 263 TFEU by holding that Binding Decision 1/2021 of the EDPB of 28 July 2021 on the dispute between the supervisory authorities concerned arising from the draft decision regarding WhatsApp drawn up by the Data Protection Commission (DPC) (Ireland) ('the Contested Decision') is a mere preparatory act. In so finding, the General Court erred in holding that WhatsApp, as a non-privileged applicant, had to demonstrate that the Contested Decision brings about a distinct change in its legal position. The General Court further erred in finding that WhatsApp is not directly concerned by the Contested Decision. Moreover, the General Court's legal analysis is erroneous. The General Court ought to have found that (i) the Contested Decision does not merely constitute an intermediate act, but rather lays out the definitive position of the EDPB in respect of the matters referred to it for determination under Article 65 GDPR ⁽¹⁾; (ii) the Contested Decision had legal effects and brought about a distinct change in WhatsApp's legal position; and (iii) WhatsApp was directly concerned by the Contested Decision because it left no genuine discretion to the DPC tasked with its implementation.

In its second plea in law, WhatsApp submits that the General Court committed errors in law in the interpretation of the notion of 'binding decision' within the meaning of Article 65(1) GDPR and the principle of consistent interpretation and application of European Union law.

⁽¹⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

GENERAL COURT

Action brought on 10 February 2023 — SunPower v EUIPO — ZO (*) (Solar panels (part of -))

(Case T-62/23)

(2023/C 121/13)

Language in which the application was lodged: English

Parties

Applicant: SunPower Corp. (San Jose, California, United States) (represented by: U. Lüken and J. Bärenfänger, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ZO (*)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant before the General Court

Design at issue: Community design 2684043-0001

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 9 December 2022 in Case R 1588/2021-3

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and declare the design at issue valid;
- alternatively, annul the contested decision and remit the case to the Third Board of Appeal of EUIPO;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Article 3(a) of Council Regulation (EC) No 6/2002 in relation to the subject matter of protection;
- Infringement of Article 25(1)(b) in conjunction with Article 6 of Council Regulation (EC) No 6/2002 in relation to the individual character of the design at issue.

Action brought on 10 February 2023 — SunPower v EUIPO — ZO (*) (Solar panels (part of -))

(Case T-63/23)

(2023/C 121/14)

Language in which the application was lodged: English

Parties

Applicant: SunPower Corp. (San Jose, California, United States) (represented by: U. Lüken and J. Bärenfänger, lawyers)

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: ZO (*)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Applicant before the General Court

Design at issue: Community design 2684043-0002

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 9 December 2022 in Case R 1589/2021-3

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and declare the design at issue valid;
- alternatively, annul the contested decision and remit the case to the Third Board of Appeal of EUIPO;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Article 3(a) of Council Regulation (EC) No 6/2002 in relation to the subject matter of protection;
- Infringement of Article 25(1)(b) in conjunction with Article 6 of Council Regulation (EC) No 6/2002 in relation to the individual character of the design at issue.

Action brought on 16 February 2023 — Tertianum v EUIPO — DPF (TERTIANUM)

(Case T-73/23)

(2023/C 121/15)

Language in which the application was lodged: English

Parties

Applicant: Tertianum AG (Dübendorf, Switzerland) (represented by: S. Fröhlich, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: DPF AG (Berlin, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: International registration designating the European Union in respect of the figurative mark TERTIANUM — International registration designating the European Union No 1 305 367

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 2 November 2022 in Case R 1706/2021-4

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 47(2) and (3) read in conjunction with Article 8(2)(a)(iii) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

**Action brought on 15 February 2023 — Oriflame Cosmetics v EUIPO — Caramé Holding
(Representation of a stylised O)**

(Case T-74/23)

(2023/C 121/16)

Language in which the application was lodged: English

Parties

Applicant: Oriflame Cosmetics AG (Schaffhausen, Switzerland) (represented by: N. Gerling and U. Pflieger, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Caramé Holding AG (Sulzbach, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: International registration designating the European Union in respect of a figurative mark (Representation of a stylised O) — International registration designating the European Union No 1 303 496

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 December 2022 in Case R 938/2022-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and the decision of the Opposition Division of EUIPO of 4 April 2022 and refuse international registration designating the European Union No 1 303 496;
- Order EUIPO and the intervener to pay the costs incurred by the applicant in addition to bearing their own costs.

Pleas in law

- Infringement of Article 47(2) and (3) of Regulation (EU) 2007/1001 of the European Parliament and of the Council;
 - Infringement of Article 10(2) of Commission Delegated Regulation (EU) 2018/625.
-

**Action brought on 15 February 2023 — DDP Specialty Electronics Materials US 8 v EUIPO —
Taniobis (AMBERTEC)**

(Case T-76/23)

(2023/C 121/17)

Language in which the application was lodged: English

Parties

Applicant: DDP Specialty Electronics Materials US 8 llc (Collegeville, Pennsylvania, United States) (represented by: G. Gibbons, SC, R. Minch and A. Bateman, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Taniobis GmbH (Goslar, Germany)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union word mark AMBERTEC — Application for registration No 18 104 742

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 14 November 2022 in Case R 1988/2021-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO and/or the intervener (if appropriate) to pay the applicant's costs including the costs incurred before the Board of Appeal.

Pleas in law

- Infringement of Articles 94(1) and 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of the applicant's fundamental rights including the principle of equality of arms, the right to a fair trial and the applicant's defence rights;
- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 16 February 2023 — Jaw de Croon v CPVO — Belgicactus (Belsemred1)

(Case T-77/23)

(2023/C 121/18)

Language in which the application was lodged: English

Parties

Applicant: Jaw de Croon Holding BV (Apeldoorn, Netherlands) (represented by: T. Overdijk, lawyer)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal: Belgicactus BVBA (Westerlo, Belgium)

Details of the proceedings before CPVO

Proprietor of the Community plant variety right at issue: Other party to the proceedings before the Board of Appeal

Community plant variety right at issue: Community Plant Variety Right Belsemred1

Procedure before CPVO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Board of Appeal of CPVO of 16 December 2022 in Case A024/2021

Form of order sought

The applicant claims that the Court should:

- annul or set aside the contested decision;
- order the CPVO to declare the Community Plant Variety Right granted to 'Belsemred1' null and void; or alternatively, order the CPVO to undertake further evidence taking on issues to be identified by the General Court;
- Order the CPVO to bear its own costs and pay and/or reimburse the costs of these proceedings incurred by the Appellant in accordance with applicable rules.

Pleas in law

- Infringement of essential procedural requirements;
- Infringement of Regulation (EU) 2100/94 of the Council or any rule of law relating to their application, including the Treaty on the European Union and the Treaty on the Functioning of the European Union.

Action brought on 17 February 2023 — Google v EUIPO — EPay (GPAY)

(Case T-78/23)

(2023/C 121/19)

Language in which the application was lodged: English

Parties

Applicant: Google LLC (Mountain View, California, United States) (represented by: C. Schmitt and M. Kinkeldey, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: EPay AD (Sofia, Bulgaria)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union word mark GPAY — Application for registration No 18 138 507

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 30 November 2022 in Case R 1761/2021-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO and, the other party to the proceedings before the Board of Appeal if it joins as intervener, to pay the costs of the proceedings.

Plea in law

- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 17 February 2023 — Chiquita Brands v EUIPO — Jara 2000 (CHIQUITA QUEEN)**(Case T-79/23)**

(2023/C 121/20)

*Language in which the application was lodged: English***Parties**

Applicant: Chiquita Brands LLC (Fort Lauderdale, Florida, United States) (represented by: R. Dissmann and L. Jones, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Jara 2000, SL (Murcia, Spain)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union word mark CHIQUITA QUEEN — Application for registration No 18 075 274

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 13 December 2022 in Case R 1811/2021-2

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs of the proceedings, including the appellant's costs incurred in the proceedings before EUIPO.

Plea in law

- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 17 February 2023 — Nextrend v EUIPO — Xiamen Axent Corporation and Axent Switzerland (Toilet units (part of -))**(Case T-82/23)**

(2023/C 121/21)

*Language in which the application was lodged: English***Parties**

Applicant: Nextrend GmbH (Flörsheim am Main, Germany) (represented by: T. Weiland and C. Corbet, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Xiamen Axent Corporation Ltd (Haicang, China), Axent Switzerland AG (Rapperswil-Jona, Switzerland)

Details of the proceedings before EUIPO

Proprietor of the design at issue: Other parties to the proceedings before the Board of Appeal

Design at issue: Community design No 2 769 299-0001

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Third Board of Appeal of EUIPO of 7 December 2022 in Case R 1604/2021-3

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- declare the design at issue invalid;
- order EUIPO to pay the costs.

Pleas in law

- Infringement of Article 62 of Council Regulation (EC) No 6/2002;
- Infringement of Article 63(2) in conjunction with Article 53(2) of Council Regulation (EC) No 6/2002;
- Infringement of Article 25(1)(b) in conjunction with Article 6(1)(b) of Council Regulation (EC) No 6/2002.

Action brought on 20 February 2023 — Biogena v EUIPO (THE GOOD GUMS)

(Case T-87/23)

(2023/C 121/22)

Language of the case: English

Parties

Applicant: Biogena GmbH & Co. KG (Salzburg, Austria) (represented by: I. Schiffer, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the figurative mark THE GOOD GUMS — International registration No 1 632 678 designating the European Union

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 13 December 2022 in Case R 1690/2022-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- grant the registration of the international registration No 1 632 678 for all applied goods;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 7(1)(b) and (c) in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 February 2023 — Ofree v EUIPO — Gamigo (gamindo)**(Case T-91/23)**

(2023/C 121/23)

*Language in which the application was lodged: Italian***Parties***Applicant:* Ofree Srl (Treviso, Italy) (represented by: L. Sergi, lawyer)*Defendant:* European Union Intellectual Property Office (EUIPO)*Other party to the proceedings before the Board of Appeal:* Gamigo AG (Hamburg, Germany)**Details of the proceedings before EUIPO***Applicant for the trade mark at issue:* Applicant*Trade mark at issue:* Application for EU figurative mark gamindo — Application for registration No 18 105 987*Proceedings before EUIPO:* Opposition proceedings*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 10 January 2023 in Case R 632/2022-2**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO and the intervener to pay the costs incurred by the applicant for the purpose of the present proceedings before the Court and for the purpose of the proceedings before the Board of Appeal of EUIPO.

Pleas in law

- Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union and of the second paragraph of Article 296 TFEU.

**Action brought on 21 February 2023 — Timothy Jacob Jensen Studios v EUIPO
(DESIGNERS TRUST)****(Case T-92/23)**

(2023/C 121/24)

*Language of the case: English***Parties***Applicant:* Timothy Jacob Jensen Studios A/S (Højslev, Denmark) (represented by: J. Løje, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the mark DESIGNERS TRUST — Application for registration No 1 626 949

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 29 November 2022 in Case R 1149/2022-4

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

Plea in law

- Infringement of Article 7(1)(b) in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.
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ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)



Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN