



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 May 2017*

(Appeal — EU trade mark — Figurative mark containing the word element ‘deluxe’ — Refusal of registration by the examiner)

In Case C-437/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 10 August 2015,

European Union Intellectual Property Office (EUIPO), represented by S. Palmero Cabezas, acting as Agent,

appellant,

the other party to the proceedings being:

Deluxe Entertainment Services Group Inc., formerly Deluxe Laboratories, Inc., established in Burbank (United States of America), represented by L. Gellman, advocate, and M. Esteve Sanz, abogada,

applicant at first instance,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan and D. Šváby (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 November 2016,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2017,

gives the following

* Language of the case: Spanish.

Judgment

- 1 By its appeal, the European Union Intellectual Property Office (EUIPO) asks the Court to set aside the judgment of the General Court of the European Union of 4 June 2015, *Deluxe Laboratories v OHIM (deluxe)* (T-222/14, EU:T:2015:364, ‘the judgment under appeal’), by which the Court annulled the decision of the Second Board of Appeal of EUIPO of 22 January 2014 (R 1250/2013-2), having dismissed the action brought by Deluxe Laboratories, Inc., which subsequently became Deluxe Entertainment Services Group, Inc. (‘Deluxe’), against the decision of the examiner who had refused to register the figurative sign ‘deluxe’ as an EU trade mark (‘decision at issue’).

Legal context

- 2 Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1) provides in Article 7, which is headed ‘Absolute grounds for refusal’:

‘1. The following shall not be registered:

...

(b) trade marks which are devoid of any distinctive character;

...

2. Paragraph 1 shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Union’.

- 3 Article 75 of that regulation provides:

‘Decisions of [EUIPO] shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments’.

Background to the dispute

- 4 The General Court summarised in paragraphs 1 to 7 of the judgment under appeal the facts giving rise to the dispute as follows:

‘1. On 10 October 2012, the applicant, [Deluxe], filed an application for registration of a Community trade mark at [EUIPO] pursuant to ... Regulation No 207/2009...

2. The mark [applied for] is the following figurative sign:



3. The goods and services for which registration was sought are in Classes 9, 35, 37, 39 to 42 and 45 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond, for each of those classes, to the following description:
- Class 9: “Motion picture and television films featuring music videos, action/adventure, comedy, drama, horror, family, children, anime, sports, documentaries, commercials, science fiction, history, education, live action, computer-generated, animated, 2D, 3D, trailers, public service announcements, fiction, non-fiction, reality, and thrillers; digital media, namely, pre-recorded DVDs, HD DVDs, and pre-recorded optical discs featuring music videos, action/adventure, comedy, drama, horror, family, children, anime, sports, documentaries, commercials, science fiction, history, education, live action, computer-generated, animated, 2D, 3D, trailers, public service announcements, fiction, non-fiction, reality, and thrillers, and downloadable audio and video recordings featuring motion picture films, television shows, and video programs”;
 - Class 35: “Inventory control and computerised tracking and tracing of packages in transit; advertising and marketing of motion pictures, television shows, and advertisements; preparing audiovisual displays in the fields of music, motion pictures, television shows, and advertisements; preparing audiovisual presentations for use in advertising; post-production editing services for video and audio commercials; product merchandising; business services, namely, outsourcing in the field of translation services, namely, providing the transfer of information relating to captions and subtitles for audiovisual works; business management of assets in the nature of television programs, motion picture films and commercials, and commercial, industrial and corporate audiovisual media content; arranging and conducting tradeshow exhibitions for commercial or advertising purposes in the fields of entertainment, television, software and video games; organizational services, namely, indexing files representing film, video, audio, picture and document content, for post-production industries; display arrangement services of digital files representing film, video, audio, picture and document content, for post-production industries; inventory management, namely, locating digital files representing film, video, audio, picture and document content, for post-production industries; business management services, namely, digital and intellectual property asset management”;

- Class 37: “Rejuvenation services for film, tape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media, namely, cleaning of film, tape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media”;
- Class 39: “Deposit and transport of cameras, film, video, digital media, data processing and accessories thereto; storage and warehousing of film, digital and video media, and promotional material related to movies, television shows, and advertisements, namely, clothing, posters, and movie, television show, and advertisement cut-outs; electronic storage of digital and video images, digital cinema and sound recordings; storage of motion pictures, television shows, advertisements, digital cinema, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, and online media; storage of master video discs, audio tapes, and CD-ROMs of music and images; media management, namely, moving, archiving, and transporting digital files representing film, video, audio, picture and document content, for post-production industries; packing articles for transportation; delivery of goods by truck; warehouse storage; and warehousing services; merchandise packaging for others, merchandise packaging for others, namely, packaging music, videos, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media and custom packaging services for sound, video, and data recordings, to the order and specification of others”;
- Class 40: “Duplication and replication of motion picture films, television shows, advertisements, and video programs on film, videotape, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media; mastering and duplication of positive and negative motion picture prints to videotape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media; cutting of negatives; rental of printing machines and apparatus for industrial development and printing in the photographic, cinema and television industries; color enhancement of black and white cinematic film; closed captioning of films and videos; digital correction services of videos, and digital video transfer, namely, providing color correction and conversion of motion picture, television, and advertising film to video film; film and any other video media reproduction, namely, remastering of films from one format to another; and contract manufacturing in the field of digital versatile discs; duplication of video-tape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media in all professional formats; video services, namely, mastering and duplication of professional video tape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media formats; film development services; film to videotape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media transfer services, namely, conversion of motion picture, television, and advertising film to videotape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media. film and other video media back-up services, namely, digital preservation and restoration of cinematic films; printing services for sound, video, and data recordings; processing and printing of motion picture, television and advertising films; conversion of motion picture, television, and advertising film from 2D to 3D; operation of laboratories for the processing of motion picture, television, and advertising films; formatting and conversion of media and digital data; digital conversion of motion picture, television, and advertising films to videotapes, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, and online media; film to tape digital transfer services, namely, transferring film to DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media”;
- Class 41: “Motion picture, television, and advertising film, videotape and digital video laboratory and post-production services, namely, high-resolution scanning of film, digital color timing, laser film recording of digital video and high definition images to film; digital and video mastering services for motion pictures, television shows, and advertisements; digital imaging; digital and electronic manipulation of images for motion pictures, television shows, and advertisements; recording digital images onto film; video and audio media production, namely, production of video cassettes and DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital,

downloadable, and online media for others; production of visual, optical and digital special effects for others, for television, motion pictures, advertisements, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media, namely, digital cinema; audio recording and production; film editing services; electronically producing motion picture, television, and advertising film from videotape, DVD, HD DVD, pre-recorded optical discs and other recorded, digital, downloadable, and online media recordings; producing special visual effects for videotapes, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media; production and distribution of motion pictures, television shows, and advertisements; providing voice-overs for videotapes, records, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media; consulting services in connection with film production and distribution; production of master video discs, audio tapes, and CD-ROMS of music and images; arranging for distribution or syndication of motion pictures, television shows, and advertisements. distribution services for film, tape, DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media; video editing services; dubbing services and film editing; video and sound track for cinema, television and advertisements”;

- Class 42: “Design and development of computer software; product research and development; hosting the websites of others; website design services for others; digital watermarking; graphic design services for print media in the field of entertainment; DVD menu packaging and design for others; design for others of music, video, DVD, and digital media packaging; quality control for others of the duplication, replication and distribution of digital film and video; content creation services, namely, authoring and development of interactive computer software and media content; design and development of multimedia products, namely, DVD menu design for others; retrieving digital files representing film, video, audio, picture and document content, for post-production industries; conversion of data or documents from physical to electronic media; authoring services for DVDs, HD DVDs, pre-recorded optical discs and other recorded, digital, downloadable, and online media; digital data compression; digital compression of audio and video data; film and video data digital compression; providing digital compression of media and digital data”;
- Class 45: “Product security consultation services in the motion picture, television, and advertising industries, namely, product authentication, detection of product piracy, and the recording and tracking of digital data; security printing, namely, encoding of media and digital data for use in tracking the source of unauthorised copies thereof and providing encoding and transcoding of media and digital data; encoding of motion picture, television, and advertising films for use in tracking the source of unauthorised copies thereof; providing content security for recorded media; anti-piracy rights management, namely, product security services in the motion picture, television, and advertising industries; security related technology and services, namely, tracking and tracing services used to secure, track, and trace encoded film against fraud, piracy, and counterfeiting; electronic content protection services; research and development in connection with the illegal downloading and storing of unauthorised digital motion picture, television, and advertising files”.

...

5. By decision of 13 June 2013, the examiner refused the application in relation to all the goods and services referred to in paragraph 3 above, in accordance with Article 7(1)(b) and (c) of Regulation No 207/2009, on the grounds that the mark applied for, first, lacked distinctive character and, second, informed consumers about the quality of the goods and services concerned.
6. On 3 July 2013, [Deluxe] filed a notice of appeal with [EUIPO], pursuant to Articles 58 to 64 of Regulation No 207/2009, against the examiner’s decision.

7. By [the decision at issue], the Second Board of Appeal of [EUIPO] ('the Board of Appeal') upheld the examiner's decision. It held, *inter alia*, that, in the parts of the European Union where English is understood, the word element 'deluxe' is not on its own capable of distinguishing the applicant's goods and services from those of its competitors, for it is a form of commonplace promotional tag and merely consists of a "claim of superior quality". It added that the term 'deluxe' falls within the category of terms that must be excluded from trade mark monopoly and that the figurative element at issue was not sufficient to confer distinctive character on the mark applied for. On those same grounds, the Board of Appeal upheld the examiner's decision in so far as he had held that the mark applied for informs consumers about the quality of the goods and services concerned. The Board of Appeal also held that that mark had not acquired distinctive character through use in the European Union.'

The procedure before the General Court and the judgment under appeal

- 5 By application lodged at the Registry of the General Court on 10 April 2014, Deluxe brought an action for the annulment of the decision at issue.
- 6 In support of its action, Deluxe raised five pleas in law, alleging infringement of the duty to state reasons, Article 7(1)(b), (c) and (3) of Regulation No 207/2009, as well as the principle of protection of legitimate expectations, acquired rights and the lawfulness of Community acts, respectively.
- 7 Deluxe argued that the Board of Appeal had not given reasons for the refusal to register the mark at issue in the light of each of the goods and services at issue. It stated *inter alia* that that Board had taken no account of the characteristics of each of those goods and services, although it was an essential factor in order to determine the fanciful, suggestive or allusive nature of the word 'deluxe'.
- 8 EUIPO contended that it followed from the expression 'without exception', used in the decision at issue, that the Board of Appeal had carried out an individual assessment of the goods and services at issue, and that it was able to rely on a general statement of reasons since all those goods and services concerned the audiovisual sector.
- 9 The General Court upheld Deluxe's action.
- 10 After having referred, in paragraphs 15 to 18 of the judgment under appeal, to the case-law of the Court of Justice, the General Court noted, in paragraphs 20 to 22 of that judgment, that, in the present case, having regard to the description of over 90 goods and services, included in eight different classes and relating to different fields, those goods and services display such differences given their nature, their characteristics, their intended use and the way in which they are marketed that they cannot be considered as a homogenous category making it possible for the Board of Appeal to adopt a general reasoning. The Board of Appeal did not indicate that the goods and services at issue had a sufficiently direct and specific link to each other so as to form a homogenous category ('the required link').
- 11 As the General Court noted in paragraph 23 of the judgment under appeal, the Board of Appeal refers, in general terms, to 'the goods and services', 'all the goods and services' and to 'the goods and services at issue', but it does not refer specifically to any of the goods and services in the classes concerned, or to categories or groups thereof. Accordingly, the General Court held, in paragraph 24 of the judgment under appeal, that, by omitting to consider the distinctive character of the mark applied for, for each of the goods and services at issue, the Board of Appeal did not carry out the specific assessment required in Article 7(1)(b) of Regulation No 207/2009 in relation to the goods and services in the classes concerned and did not state reasons to the requisite legal standard in relation to the decision at issue in that respect.

- 12 In the context of considering EUIPO's arguments, the General Court stated, in paragraph 26 of the judgment under appeal, that it does not follow, even indirectly, from the expression 'without exception' that the Board of Appeal assessed the distinctive character of the mark applied for in the light of all the goods and services at issue. As the Court observed, the Board of Appeal merely indicated in the decision at issue that all the goods, without exception, can be presented as being of superior quality and that all the services, without exception, can be presented as providing such quality. It did not indicate that the goods and services in the classes concerned have the required link and, accordingly, did not mention any element of such a kind as to explain the recourse to a general reasoning.
- 13 As for EUIPO's argument that the goods and services at issue were directly linked to the audiovisual sector, the General Court noted, in paragraph 27 of the judgment under appeal, that that finding does not appear in the decision at issue. Moreover, the General Court denied the existence of the required link between certain goods and services, such as motion pictures, delivery of goods by truck, warehouse storage and warehousing services, product research and development services as well as hosting and design of websites for others. It found that, in any event, the existence of such a link is not apparent from the wording of the decision at issue. Finally, the General Court considered that the fact, supposing it were established, that the word 'deluxe' amounts to a laudatory and promotional term capable of applying to all the goods and services at issue has no bearing in that regard.
- 14 Consequently, the General Court annulled the decision at issue.

The forms of order sought

- 15 By its appeal, EUIPO claims that the Court should:
- set aside the judgment under appeal;
 - order the applicant before the General Court to pay the costs of the proceedings.

The appeal

- 16 By its appeal, EUIPO raises a single ground for appeal, alleging infringement of the first sentence of Article 75 of Regulation No 207/2009, in conjunction with Article 7(1)(b) and (2) of that regulation. This ground is divided into two parts.

Arguments of the parties

- 17 By the first part of its single ground for appeal, EUIPO complains that the General Court erred in law by restricting the possibility of adopting a general reasoning only to the situation in which the goods and services form homogenous categories. EUIPO considers that the General Court cannot rule out the possibility of carrying out a general reasoning in relation to diverse goods and services where the perception of the sign in respect of each of them is uniform and, therefore, the reasoning which applies to them remains invariable.
- 18 Thus, according to EUIPO, it is sufficient that the goods and services designated by the application for registration have a common characteristic for a general reasoning to be allowed in respect to them. That common characteristic is that, for each of the goods and services covered, the suggestion of high quality is perceived as a mere sales argument. In the present case, the sign 'deluxe' conveys, in the same way for all those goods and services, a laudatory and promotional message incapable of allowing the public to identify the origin of those goods and services. In support of its line of argument, EUIPO relies on the reasoning adopted by the Court in the order of 11 December 2014, *FTI Touristik v OHIM*

(C-253/14 P, not published, EU:C:2014:2445), in which the Court recognised that there was a sufficiently direct and specific link between the goods and services concerned in the light of a common feature which consisted of the fact that all the goods and services could be the subject of discounts or special benefits.

- 19 Therefore, EUIPO considers that the finding in paragraph 24 of the judgment under appeal that the Board of Appeal did not carry out the concrete assessment required, having failed to identify homogeneity between all the goods and services, is erroneous.
- 20 Similarly, EUIPO argues that the Court made an error in law by dismissing, in paragraph 27 of the judgment under appeal, as irrelevant, the Board of Appeal's finding that the term 'deluxe' is a laudatory and promotional term capable of applying to all the goods and services at issue.
- 21 Deluxe contends that EUIPO relied to a large extent on the BigXtra case which gave rise to the order of 11 December 2014, *FTI Touristik v OHIM* (C-253/14 P, not published, EU:C:2014:2445), in which the registration of the mark 'BigXtra' had been refused on the ground that the term was clearly laudatory. Deluxe argues that that case is not relevant because it is distinguishable from the present case. The term 'deluxe' can be descriptive or laudatory only in relation to the goods themselves and not in relation to the way in which they are sold, since there is no 'deluxe' way of selling a product, especially if the relevant public is taken into account.
- 22 By the second part of its single ground for appeal, EUIPO submits that the General Court's interpretation of a requirement of sufficient homogeneity, in paragraphs 20 to 22 and 26 of the judgment under appeal, which allows the Board of Appeal to adopt a general reasoning for refusing the application for registration of the mark at issue, does not comply with the case-law, in particular the order of 18 March 2010, *CFCMCEE v OHIM* (C-282/09 P, EU:C:2010:153). By establishing a correlation between the existence of a 'homogeneous category' and the description of the goods and services, the General Court erroneously interprets the concept of 'sufficiently homogeneous' 'category' or 'group' of goods or services within the meaning of that case-law and, consequently, the concept of 'a sufficiently direct and specific link' that must exist between the goods and services.
- 23 According to EUIPO, the requirement of sufficient homogeneity should be understood in a broader way so that it is sufficient that the goods and services all display a common characteristic, which could also exist between goods or services in different sectors.
- 24 EUIPO claims that, in the present case, the decision at issue indicates clearly that the common characteristic of the goods and services at issue is that all the goods, without exception, can be presented as being of superior quality and all the services, without exception, can be presented as providing such quality.
- 25 Deluxe challenges EUIPO's assertion that the goods and services at issue are sufficiently homogenous and can, thereby, be considered a single group.

Findings of the Court

- 26 Given that EUIPO disputes the General Court's assessments referred to in paragraphs 10 to 13 of the present judgment and that the two parts of the single ground for appeal allege infringement of Article 7(1)(b) and Article 75 of Regulation No 207/2009, these parts should be examined together.
- 27 As a preliminary point, it is apparent from settled case-law that the competent authority cannot merely carry out a minimal assessment of an application for registration, but it must, on the contrary, carry out a stringent and full examination in order to prevent trade marks from being improperly registered (judgment of 6 May 2003, *Libertel*, C-104/01, EU:C:2003:244, paragraph 59).

- 28 Since registration of a mark is always sought for goods or services specified in the application for registration, the question whether registration can be refused on one of the absolute grounds must be assessed on the facts by reference to those goods or services (judgment of 15 February 2007, *BVBA Management, Training en Consultancy*, C-239/05, EU:C:2007:99, paragraph 31).
- 29 It must be recalled that, according to the Court's case-law, first, the examination of the absolute grounds for refusal must be carried out in relation to each of the goods or services for which trade mark registration is sought and, secondly, that the decision by which the competent authority refuses registration of a mark must, in principle, state reasons in respect of each of those goods or services (judgment of 15 February 2007, *BVBA Management, Training en Consultancy*, C-239/05, EU:C:2007:99, paragraph 34, and order of 18 March 2010, *CFCMCEE v OHIM*, C-282/09 P, EU:C:2010:153, paragraph 37).
- 30 However, as regards that last requirement, the Court has stated that the competent authority may use only general reasoning for all of the goods and services concerned where the same ground for refusal is given for a category or group of goods or services (judgments of 15 February 2007, *BVBA Management, Training en Consultancy*, C-239/05, EU:C:2007:99, paragraph 37, and of 17 October 2013, *Isdin v Bial-Portela*, C-597/12 P, EU:C:2013:672, paragraph 26).
- 31 The Court then made clear that such a power extends only to goods and services which are interlinked in a sufficiently direct and specific way, to the point where they form a sufficiently homogeneous category or group of goods or services (judgment of 17 October 2013, *Isdin v Bial-Portela*, C-597/12 P, EU:C:2013:672, paragraph 27).
- 32 In order to determine whether the goods and services covered by an application for registration of an EU mark are interlinked in a sufficiently direct and specific way and can be placed in sufficiently homogenous categories and groups, for the purposes of the case-law cited in the previous paragraph, account must be taken of the fact that the objective of that exercise is to enable and facilitate the assessment *in concreto* of the question whether or not the mark concerned by the application for registration comes under one of the absolute grounds for refusal, in accordance with the case-law cited in paragraph 28 of the present judgment.
- 33 Accordingly, the placement of the goods and services at issue in one or more groups or categories must be carried out in particular on the basis of the characteristics which are common to them and which are relevant for the analysis of whether or not a specific absolute ground for refusal may apply to the mark applied for in respect of those goods and services. It follows that such an assessment must be carried out *in concreto* for the examination of each application for registration and, as the case may be, for each of the different absolute grounds for refusal which may apply.
- 34 It follows from the foregoing considerations that it cannot be ruled out a priori that the goods and services covered by an application for registration all present a relevant characteristic for the analysis of an absolute ground for refusal and that they can be placed, for the purposes of examining the application for registration at issue in relation to that absolute ground for refusal, in a sufficiently homogenous single category or group, for the purposes of the case-law cited in paragraph 31 of the present judgment.
- 35 In the present case, it is apparent from paragraph 26 of the judgment under appeal that, in relation to all the goods and services covered by the application for registration at issue, the Board of Appeal indicated that all the goods, without exception, can be presented as being of superior quality, and all the services, without exception, can be presented as providing superior quality. It follows from that consideration that the Board of Appeal, in essence, considered that all the goods and services covered by the application for registration under examination presented a characteristic which was relevant to the analysis of the absolute ground for refusal under Article 7(1)(b) of Regulation No 207/2009, namely the fact that they could be presented as having or providing superior quality and that,

therefore, they were all part of a sufficiently homogenous single category or group, for the purposes of the analysis of that absolute ground for refusal. The relevance, according to the Board of Appeal, of that common characteristic of the goods and services at issue for the purposes of the analysis that it had to carry out is demonstrated by the finding in the decision at issue that the mark applied for consisted of a ‘claim of superior quality’.

- 36 The Board of Appeal’s failure, mentioned in paragraph 22 of the judgment under appeal, to expressly indicate that the goods and services at issue had such a sufficiently direct and specific link to each other to the point that they form a homogenous category cannot lead to a different conclusion, since such an indication was implicit from the Board’s consideration referred to in paragraph 26 of the judgment under appeal.
- 37 It was for the General Court, in order to check observance of the Board of Appeal’s obligation to carry out to the specific assessment required by Article 7(1)(b) of Regulation No 207/2009 and to give sufficient reasons to the requisite standard, to examine, in the context of a factual assessment, the merits of the Board of Appeal’s considerations noted in paragraph 35 of the present judgment.
- 38 In particular, it was for the General Court, first, to check whether the mark applied for, which is composed of a word element and a figurative element, was indeed capable of being perceived, directly and immediately, as a claim of superior quality or a laudatory message by the relevant public rather than as an indication of the commercial origin of the goods and services it designates.
- 39 Second, it was for the General Court to check, in the context of the analysis of the word element of the mark applied for, whether the term ‘deluxe’ did actually convey the concept of ‘superior quality’ as claimed by the Board of Appeal, given that that word element amounts to a direct reference to the concept of ‘luxury’. If the term ‘deluxe’ were to have a meaning distinct to that of ‘superior quality’, as considered by the Advocate General in paragraph 54 to 55 of his Opinion, the General Court would then have to examine whether or not, in the light of that meaning, the goods and services covered by the mark at issue constitute a homogenous group justifying recourse to a general reasoning.
- 40 However, the General Court ruled out generally the possibility of finding the goods and services at issue to be homogenous and it did not take into account, in that regard, the specificity of the mark applied for or, in particular, of its perception by the relevant public.
- 41 Indeed, as is apparent from paragraph 21 of the judgment under appeal, the General Court merely found that the goods and services covered by the application for registration at issue displayed such differences as regards their nature, their characteristics, their intended use and the way in which they are marketed that they could not be considered a homogenous category enabling the Board of Appeal to adopt a general reasoning with respect to them. The General Court therefore failed to have regard to the possibility that, despite their differences, all the goods and services at issue could have a common characteristic, relevant to the analysis that the Board of Appeal had to carry out, which, in accordance with the considerations set out in paragraphs 33 and 34 of the present judgment, could justify their placement within a single homogenous group and the use by the Board of Appeal of a general reasoning in relation to them.
- 42 For the same reasons, the Court’s assertion, in paragraph 27 of the judgment under appeal, that ‘the fact that the term “deluxe” amounts to a laudatory and promotional term capable of applying to all the goods and services at issue is without consequence’ is also erroneous.
- 43 It follows from the foregoing that the General Court erred in law in interpreting Article 7(1)(b) and Article 75 of Regulation No 207/2009, with the result that the judgment under appeal must be set aside.

- 44 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice, the latter may, after setting aside the decision of the General Court, itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment. In the present case, the state of the proceedings does not permit the Court to give final judgment.
- 45 The case should therefore be referred back to the General Court and the costs reserved.

On those grounds, the Court (Third Chamber) hereby:

- 1. Sets aside the judgment of the General Court of the European Union of 4 June 2015, *Deluxe Laboratories v OHIM (deluxe)* (T-222/14, not published, EU:T:2015:364);**
- 2. Refers the case back to the General Court of the European Union;**
- 3. Reserves the costs.**

[Signatures]