



## Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

13 July 2018\*

(EU trade mark — Opposition proceedings — Application for EU figurative mark Pallas Halloumi — Prior United Kingdom word certification mark HALLOUMI — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

In Case T-825/16,

**Republic of Cyprus**, represented by S. Malynicz, QC, and V. Marsland, Solicitor,

applicant,

v

**European Union Intellectual Property Office (EUIPO)**, represented by D. Gája, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of OHIM, and intervener before the General Court, being

**Papouis Dairies Ltd**, established in Nicosia (Cyprus), represented by N. Korogiannakis, lawyer,

ACTION brought against an appeal brought before the Fourth Chamber of the Board of Appeal of EUIPO of 22 September 2016 (Case R 2065/2014-4), relating to opposition proceedings between the Republic of Cyprus and Papouis Dairies,

THE GENERAL COURT (Second Chamber),

composed of M. Prek, President, F. Schalin (Rapporteur) and M.J. Costeira, Judges,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the application lodged at the Court Registry on 24 November 2016,

having regard to the response of EUIPO lodged at the Court Registry on 15 February 2017,

having regard to the response of the intervener lodged at the Registry of the General Court on 10 March 2017,

having regard to the decision of 15 October 2017 joining Cases T-825/16 and T-847/16 for the purposes of the oral part of the procedure,

\* Language of the case: English.

further to the hearing on 5 February 2018,

gives the following

## Judgment

### Background to the dispute

- 1 On 12 September 2012, the intervener, Papouis Dairies Ltd, acting under its previous company name Halloumis POC Farmers Milk Industry Ltd, or Halloumis, filed an application for registration of a European Union trade mark with the European Union Intellectual Property Office (EUIPO) under Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), as amended (replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1)).
- 2 The mark registration of which was sought is the figurative sign comprising the colour indications ‘yellow, red, blue, white, grey’ and corresponding to the following representation:



- 3 The goods for which registration was sought come within Class 29 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, following the limitation notified to EUIPO by letter of 11 October 2016 and accepted by EUIPO, corresponding to the following description: ‘Cheese made out of cow’s milk and/or sheep’s milk and/or goat’s milk (from any milk proportion and combination), salt, rennet’.
- 4 The EU trade mark application was published in the *European Union Trade Marks Bulletin* No 190/2012 of 4 October 2012.
- 5 On 3 January 2013, the Republic of Cyprus filed a notice of opposition pursuant to Article 41 of Regulation No 207/2009 (now Article 46 of Regulation No 2017/1001) to registration of the mark applied for in respect of the goods referred to in paragraph 3 above.
- 6 The opposition was based on, inter alia, the earlier United Kingdom certification word mark HALLOUMI, registered on 22 February 2002 under number 14511888 (‘the earlier mark’), designating goods in Class 29 and corresponding to the following description: ‘Cheese made from sheep’s and/or goat’s milk; cheese made from blends of cow’s milk; all included in Class 29’.
- 7 The opposition was also based on earlier Cypriot certification word marks XΑΛΛΟΥΜΙ and HALLOUMI, respectively registered under numbers 36675 and 36766. Those marks were, however, considered unsubstantiated both by the Opposition Division and the Board of Appeal and the Republic of Cyprus did not rely on them further in support of the opposition, which the Board of

Appeal interpreted as a withdrawal. Those marks were not taken into consideration in this case and the Republic of Cyprus further confirmed in its application that it would not rely on them in these proceedings.

- 8 The grounds put forward in support of the opposition were those referred to in Article 8(1)(b) and Article 8(5) of Regulation No 207/2009 (now, respectively, Article 8(1)(b) and Article 8(5) of Regulation 2017/1001).
- 9 On 7 July 2014, the Opposition Division rejected the opposition and ordered the Republic of Cyprus to pay the costs.
- 10 On 8 August 2014, the Republic of Cyprus filed an appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009 (now Articles 66 to 71 of Regulation 2017/1001), against the decision of the Opposition Division.
- 11 By decision of 22 September 2016 ('the contested decision'), the Fourth Board of Appeal of EUIPO dismissed the appeal and ordered the Republic of Cyprus to pay the costs incurred for the purposes of the opposition and appeal proceedings.
- 12 First of all, the Board of Appeal stated that, notwithstanding the fact that the earlier mark was a national certification mark, the condition set out in Article 8(1)(b) of Regulation No 207/2009 relating to the similarity of the signs at issue applied to all earlier marks covered by Article 8(2) of Regulation No 207/2009 (now Article 8(2) of Regulation 2017/1001).
- 13 The Board then considered that, for the purposes of Article 8(1)(b) of Regulation No 207/2009, there was no likelihood of confusion between the earlier mark and the mark applied for. It took the view that the inherent distinctive character of the term 'halloumi' was weak, pointing out first of all that the General Court, in its judgment of 7 October 2015, *Cyprus v OHIM (ΧΑΛΛΟΥΜΙ and HALLOUMI)* (T-292/14 and T-293/14, EU:T:2015:752), had considered that, in the eyes of the Cypriot public, the word designated a particular type of cheese produced in Cyprus, then stating that that finding must be extended to the public in the United Kingdom which is relevant in this case. That word is older than all the trade marks at issue and, as such, is, to the relevant public, descriptive of the characteristics and composition of the product and does not refer to whether the user of the earlier mark belongs to a group of licensees authorised to use the mark.
- 14 With regard to the similarity of the signs at issue, the Board of Appeal considered that, since the dominant element of the mark applied for is the word 'pallas', there is only low visual similarity between the marks, average phonetic similarity and no relevant conceptual similarity. As regards the global assessment of the likelihood of confusion, it found that the Republic of Cyprus had not succeeded in proving any enhanced distinctive character of the earlier mark, or that it would be perceived by the United Kingdom public as a reference to any certification. Thus, having regard to its assessment of the inherent distinctive character of the earlier mark, the Board of Appeal found that the differences between it and the dominant element of the mark applied for, in this case the word 'pallas', were sufficient to obviate any likelihood of confusion.
- 15 Finally, the Board of Appeal found that the conditions for implementing Article 8(5) of Regulation No 207/2009 were not satisfied. The reputation of the earlier mark was not proven by the Republic of Cyprus. The detriment to the reputation of the earlier mark could, moreover, not be assessed in relation to the rules under the certification regime but, in the context of Regulation No 207/2009, only in relation to the perception of the goods by the relevant public.

## Forms of order sought

- 16 The Republic of Cyprus claims that the Court should:
- annul the contested decision;
  - order EUIPO and the intervener to pay the costs.
- 17 EUIPO and the intervener contend that the Court should:
- dismiss the action in its entirety;
  - order the Republic of Cyprus to pay the costs.

## Law

### *Admissibility of the action*

- 18 Under Article 177(2) of the Rules of Procedure of the General Court, where the applicant was not the only party to the proceedings before the Board of Appeal, the application should also contain the names of all the parties to those proceedings and the addresses which they had given for the purposes of notifications.
- 19 In the present case, in the application, the Republic of Cyprus has designated in error Pancyprian Organisation of Cattle Farmers (POCF) Ltd as proprietor of the mark Pallas Halloumi and the other party to the proceedings before the Board of Appeal. Such erroneous identification of the intervener in the present case would still not lead to the inadmissibility of the application, since the latter contains elements which make it possible unambiguously to identify the other party to the proceedings before the Board of Appeal and, following a measure of organisation of procedure of 25 September 2017, the Republic of Cyprus stated that it had no objection to the amendment of that designation. In such a situation, it is appropriate to regard that other party as the intervener, even though its name was not initially referred to in the application.

### *The single plea in law, alleging infringement of Article 8(1)(b) of Regulation No 207/2009*

- 20 In support of its action, the Republic of Cyprus puts forward a single plea in law, alleging infringement of Article 8(1)(b) of Regulation No 207/2009. That plea is divided into three parts. Firstly, it complains that the Board of Appeal erred in its assessment of the distinctive character of the earlier mark, in particular, in finding, wrongly, that the inherent distinctive character of that mark was weak. Secondly, it submits that the Board of Appeal incorrectly assessed the visual and conceptual similarity of the signs at issue. Thirdly, it submits that the Board of Appeal erred in finding, following its overall assessment of the likelihood of confusion, that there was no likelihood of confusion, in particular as a result of an error in the analysis of the evidence.
- 21 EUIPO and the intervener dispute the arguments of the Republic of Cyprus.
- 22 Under Article 8(1)(b) of Regulation No 207/2009, upon opposition by the proprietor of an earlier mark, the mark applied for is not to be registered if, because of its identity with, or similarity to, an earlier trade mark and the identity or similarity of the goods or services covered by the two marks, there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected. The likelihood of confusion includes the likelihood of association with the earlier trade mark. Furthermore, under Article 8(2)(a)(ii) of Regulation No 207/2009 (now Article 8(2)(a)(ii))

of Regulation 2017/1001), ‘earlier trade marks’ means trade marks registered in a Member State with a date of application for registration which is earlier than the date of application for registration of the EU trade mark.

- 23 According to settled case-law, the risk that the public might believe that the goods or services in question come from the same undertaking or from economically-linked undertakings constitutes a likelihood of confusion. According to the same line of case-law, the likelihood of confusion must be assessed globally, according to the relevant public’s perception of the signs and goods or services in question and taking into account all factors relevant to the circumstances of the case, in particular the interdependence between the similarity of the signs and that of the goods or services covered (see judgment of 9 July 2003, *Laboratorios RTB v OHIM — Giorgio Beverly Hills (GIORGIO BEVERLY HILLS)*, T-162/01, EU:T:2003:199, paragraphs 30 to 33 and the case-law cited).

#### *The relevant public*

- 24 According to the case-law, the likelihood of confusion, within the meaning of Article 8(1)(b) of Regulation No 207/2009, between two marks should not be assessed on the basis of a comparison of the signs in the abstract and the goods or services which they cover. The assessment of that risk must, instead, be based on the perception that the relevant public will have of those signs, goods and services (see judgment of 2 October 2015, *The Tea Board v OHIM — Delta Lingerie (Darjeeling)*, T-624/13, EU:T:2015:743, paragraph 24 and the case-law cited).
- 25 More specifically, according to the case-law, in the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods concerned, who is reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods or services in question (see judgment of 13 February 2007, *Mundipharma v OHIM — Altana Pharma (RESPICUR)*, T-256/04, EU:T:2007:46, paragraph 42 and the case-law cited).
- 26 It is necessary to confirm, in this case, that they appear well founded in light of the evidence in the file, the findings of the Board of Appeal, as set out in paragraph 16 of the contested decision, as regards the relevant public in relation to the goods at issue. Since the earlier mark is a United Kingdom mark, it appears that the relevant public to be taken into consideration is the general public of the United Kingdom. The marks at issue are essentially registered for identical products, in this case cheese. Since they are everyday consumer goods, it must be held that they are aimed at the average consumer, who is deemed to be reasonably well informed and reasonably observant and circumspect (see, to that effect, judgment of 25 October 2006, *Castell del Remei v OHIM — Bodegas Roda (ODA)*, T-13/05, not published, EU:T:2006:335, paragraph 46). In the context of the analysis set out in its decision of 7 July 2014, the Opposition Division further found that the level of attention of that public was average when choosing that type of product, that decision, together with its statement of reasons, forms part of the context in which the contested decision was adopted, a context which is known to the Republic of Cyprus and enables the Court to carry out fully its judicial review as to whether the assessment of the likelihood of confusion was well founded (see, to that effect, judgment of 21 November 2007, *Wesergold Getränkeindustrie v OHIM — Lidl Stiftung (VITAL FIT)*, T-111/06, not published, EU:T:2007:352, paragraph 64). In the light of the goods in question, those findings, which are not disputed by the parties, appear well founded.

#### *The comparison of the signs*

- 27 The global assessment of the likelihood of confusion, in relation to the visual, phonetic or conceptual similarity of the signs at issue, must be based on the overall impression given by the signs, account being taken, in particular, of their distinctive and dominant elements. The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global assessment

of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 35 and the case-law cited).

- 28 The assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 41 and the case-law cited). It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 42, and judgment of 20 September 2007, *Nestlé v OHIM*, C-193/06 P, not published, EU:C:2007:539, paragraph 43). That may be the case, in particular, where that component is likely by itself to dominate the image which the relevant public retains of that mark, with the result that all the other components are negligible in the overall impression created by the mark (judgment of 20 September 2007, *Nestlé v OHIM*, C-193/06 P, not published, EU:C:2007:539, paragraph 43).
- 29 It is in the light of those observations that the Court must examine whether the Board of Appeal was right to conclude that the distinctive character of the earlier mark was weak and properly compared the signs at issue.

– *The first part, alleging an error in the assessment of the inherent distinctive character of the earlier mark*

- 30 In the present case, as regards the inherent distinctive character of the earlier mark in respect of the cheese, the Board of Appeal, following an examination in paragraphs 18 to 25 of the contested decision, concluded, in paragraph 26 of that decision, that it was weak because of the descriptive meaning of that mark, given that, in the context of the global assessment of the likelihood of confusion, the Board of Appeal also examined the possible enhanced distinctiveness related to use, finally concluding that that had not been demonstrated.
- 31 By way of preliminary observations, the Republic of Cyprus sets out the consequences which it claims ensue from the nature of United Kingdom certification marks as regards the distinctive character of such marks. It submits, first of all, that, under Article 1 of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25), national certification marks are permitted under EU law and are therefore to be given full effect. In application of that directive, pursuant to the Trade Marks Act 1994, United Kingdom trade mark law governs the registration of trade marks. Under that legislation, a certification mark is defined as indicating that the goods or services which it designates are certified by the owner of the mark and have certain characteristics. Essentially, the distinguishing function of certification marks must be understood as enabling goods of a certain class and observing the certification rules to be distinguished from goods in another class. Furthermore, the public does not need to know that the mark in question is a certification mark or to know the name of the certifying body.
- 32 According to the Republic of Cyprus, under Article 8(2) of Regulation No 207/2009, since national certification marks are trade marks registered in a Member State, they can form the basis for opposition proceedings brought against subsequent registration of an EU trade mark.
- 33 With regard to the plea it raises against the contested decision, the Republic of Cyprus first of all criticises the Board of Appeal for having applied the reasoning of the General Court in its judgment of 7 October 2015, *XΑΛΛΟΥΜΙ and HALLOUMI*, (T-292/14 and T-293/14, EU:T:2015:752) to this case,

even though the relevant public and nature of the marks in question were different. That decision related to applications to register EU word marks, namely XΑΛΛΟΥΜΙ and HALLOUMI, filed by the Republic of Cyprus and rejected on the basis of an absolute ground for refusal under Article 7(1)(b) and (c) of Regulation No 207/2009 (now Article 7(1)(b) and (c) of Regulation 2017/1001), on the ground that they were descriptive.

- 34 Finally, the Republic of Cyprus relies on two decisions handed down in the United Kingdom by the High Court of Justice (England & Wales), Chancery Division, which support its interpretation of the distinctive character of a United Kingdom certification mark. The evidence which it produced also highlights the distinctive character of the earlier mark and the perception on the part of the United Kingdom public of the term ‘halloumi’ as distinguishing one class of goods from another class whose characteristics, in particular its ingredients, and place of origin are understood by the public.
- 35 EUIPO and the intervener dispute the arguments of the Republic of Cyprus.
- 36 The assessment of the distinctive character of a trade mark is of particular importance in so far as the assessment of the likelihood of confusion globally and that it implies some interdependence between the factors taken into account (see, to that effect, judgment of 9 July 2003, *Laboratorios RTB v OHIM — Giorgio Beverly Hills (GIORGIO BEVERLY HILLS)*, T-162/01, EU:T:2003:199, paragraphs 30 to 33), with the result that the more distinctive the earlier mark, the greater will be the likelihood of confusion (judgment of 29 September 1998, *Canon, C-39/97*, EU:C:1998:442, paragraph 18). Accordingly, a weak distinctive character requires a greater degree of similarity between the signs or between the goods and services concerned in order to find that there is a likelihood of confusion. As a result, the underestimation of the distinctive character of the earlier mark by the Board of Appeal is likely to vitiate the contested decision with an error in the assessment of the likelihood of confusion.
- 37 Where an opposition is based on the existence of an earlier national mark, the checks on the degree of distinctiveness of that mark have limits, however, since they cannot lead to a finding of one of the absolute grounds for refusal set out in particular in Article 7(1)(b) and (c) of Regulation No 207/2009, that is to say, a lack of distinctiveness or the purely descriptive character of that mark. Thus, if Article 8(1)(b), read in conjunction with Article 8(2)(a)(ii) of Regulation No 207/2009 is not to be infringed, it is necessary to acknowledge that an earlier national mark on which an opposition against the registration of an EU trade mark is based has a certain degree of distinctiveness (see, to that effect, judgment of 24 May 2012, *Formula One Licensing v OHIM, C-196/11 P*, EU:C:2012:314, paragraphs 43 to 47).
- 38 In the present case, although Regulation No 207/2009, which was applied by the Board of Appeal when it delivered the contested decision, did not include specific provisions concerning the protection of certification marks as such, as the Court has recalled in its case-law (judgment of 7 October 2015, *XΑΛΛΟΥΜΙ and HALLOUMI, T-292/14 and T-293/14*, EU:T:2015:752, paragraph 35), Regulation 2017/1001, applicable as from 1 October 2017, now includes provisions on the EU certification mark which it defines, in Article 83(1) thereof, as a mark which is ‘capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified’.
- 39 The registration of certification marks is, moreover, provided for in Directive 2008/95. The Member States, like the United Kingdom with the Trade Marks Act 1994, may authorise the registration of such marks which accordingly constitute, within the meaning of Article 8(2)(a)(ii) of Regulation No 207/2009, ‘trade marks registered in a Member State’, which can be relied upon as the basis for opposition proceedings, as the Republic of Cyprus has done by relying on the earlier mark.

- 40 Although the earlier mark falls within the category of marks registered in a Member State, it must be noted, as EUIPO points out, that the EU trade mark system established under Regulation No 207/2009 is trade mark regime is autonomous, self-sufficient and applies independently of any national system (judgment of 5 December 2000, *Messe München v OHIM (electronica)*, T-32/00, EU:T:2000:283, paragraph 47). Thus, it appears justified to take into account the national law since it enables the validity of the earlier mark to be proved. However, as regards the inherent distinctiveness of the latter, even if, in the light of the judgment of 24 May 2012, *Formula One Licensing v OHIM (C-196/11 P)*, EU:C:2012:314, paragraph 47), it is appropriate to recognise that the word ‘halloumi’, registered as a national certification mark, has a certain degree of distinctiveness, that does not mean that it must be recognised as having a distinctive character per se to a degree which would provide it with unconditional protection enabling opposition to any registration of a later mark including that term.
- 41 In the present case, it must be borne in mind that, on two occasions, the Court has already held that the term ‘halloumi’ was perceived by the public, in particular the Cypriot public, as designating a speciality cheese from Cyprus (see, to that effect, judgment of 13 June 2012, *Organismos Kypriakis Galaktokomikis Viomichanias v OHIM — Garmo (HELLIM)*, T-534/10, EU:T:2012:292, paragraph 41, and of 7 October 2015, *XΑΛΛΟΥΜΙ and HALLOUMI*, T-292/14 and T-293/14, EU:T:2015:752, paragraphs 20 and 21). In the contested decision, the Board of Appeal merely observed that, in the light of the evidence produced in the present case, the conclusions which the Court reached in those judgments can be transposed to the public of the United Kingdom.
- 42 That finding must be upheld. Indeed, there is nothing in the evidence submitted by the Republic of Cyprus before the Board of Appeal, as analysed in paragraphs 20 and 21 of the contested decision, to contradict that finding. That evidence, consisting in particular in data on sales volumes, on promotion and marketing efforts, extracts from cookery magazines or press articles and various written statements, relates to ‘Halloumi’ cheese as a speciality cheese from Cyprus, but it is not possible to link the term ‘halloumi’, used generically, to any certification mark, or even to a reference to a certified cheese. As the Board of Appeal correctly pointed out in paragraph 25 of the contested decision, it appears, in the light of those various pieces of evidence, that the term is not perceived by the United Kingdom public as the name of a type of cheese produced in Cyprus and that ‘whether a cheese can be called “halloumi” depends on its characteristics and composition and not whether the person marketing it belongs to a particular group of licensees’.
- 43 Thus, the word ‘halloumi’ is directly understood by the United Kingdom public as describing the characteristics or even the origin of the goods, and not as an indication of its certified quality, not even as an indication of that quality. It must therefore be held that the earlier mark, consisting solely of the word ‘halloumi’, in that it is descriptive of the characteristics and origin of the product which it covers, has only a weak inherent distinctive character and that the existence of any enhanced distinctive character is, in addition, not proven.
- 44 The argument of the Republic of Cyprus relating to the specific scope that should be attributed to the inherent distinctiveness of the earlier mark, given its nature as a certification mark, is also ineffective and can only be rejected.
- 45 Even if the distinguishing function of United Kingdom certification marks must be understood as the ability to distinguish one class of goods from another class of goods, it must be noted, as EUIPO points out, that, in the light of the evidence adduced by the Republic of Cyprus, it has not been demonstrated that the earlier mark, as a United Kingdom certification mark, is capable of constituting an indication of the commercial origin of the goods in question. The existence of a likelihood of confusion on the specific conditions of Article 8(1)(b) of Regulation No 207/2009 depends on that being demonstrated. That finding, which is case-specific, does not, however, preclude, with regard to a certification mark, that a certification of the quality, for example of the raw material used, may be sufficient for the view to be taken that such a mark fulfils its function of indicating the origin of the goods in that it guarantees to consumers that the goods come from a single undertaking, namely the proprietor of the



mark and its affiliates, under the control of which those goods are manufactured and which is responsible for their quality (see, by analogy, judgment of 8 June 2017, *W.F. Gözze Frottierweberei and Gözze*, C-689/15, EU:C:2017:434, paragraphs 49 and 50).

46 The question whether actual observance by the applicant for an EU mark of characteristics guaranteed by the proprietor of the earlier certification mark forms part of the essential function of that mark is, by contrast, outside the scope of protection afforded by Article 8(1)(b) of Regulation No 207/2009. As EUIPO argues, that question concerns at most the use of a mark in so far as it could harm the essential function of a certification mark and mislead the public as to the certification of the characteristics of the goods.

47 In the present case, as in the judgment of 13 June 2012, *HELLIM* (T-534/10, EU:T:2012:292, paragraphs 48 to 55), it must be held that the Board of Appeal rightly found that the earlier mark had a weak distinctive character as a result of its descriptive meaning.

48 Accordingly, the first part must be rejected as unfounded.

– *The second part, claiming alleged erroneous assessment of the visual, phonetic and conceptual similarity of the signs at issue*

49 In the first place, in order to compare the signs at issue from a visual, phonetic and conceptual point of view, it is appropriate to give preliminary consideration to the elements comprising the mark applied for to determine its dominant element or elements, based on the guidelines laid down in the case-law, as referred to in paragraph 27 above.

50 In that respect, it must be borne in mind, in particular, as regards a composite mark, that it cannot be ruled out that the overall impression conveyed to the relevant public by such a mark may not, in certain circumstances, be dominated by one or more of its components (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 41 and the case-law cited), and that all its other components are negligible within the overall impression it creates (judgment of 20 September 2007, *Nestlé v OHIM*, C-193/06 P, not published, EU:C:2007:539, paragraph 43).

51 As regards the identification of the dominant element(s) of the mark applied for, it is appropriate to note that the sign is composed of the terms ‘pallas’ and ‘halloumi’. The word ‘pallas’ is written in white, in bold on a red oval background which forms the upper part of the sign. The word ‘halloumi’ is also written in white, in a smaller bold font, still on a red oval background placed at a lower level, slightly overlapping the bottom of the oval containing the word ‘pallas’.

52 In the light of the graphic form of the mark applied for, it appears that the term ‘pallas’ will be read first by the relevant public. Indeed, that public generally pays greater attention to the beginning of a mark than to the end (judgments of 25 March 2009, *L’Oréal v OHIM — SpA Monopole (SPA THERAPY)*, T-109/07, EU:T:2009:81, paragraph 30, and of 13 May 2015, *Deutsche Post v OHIM — PostNL Holding (TPG POST)*, T-102/14, not published, EU:T:2015:279, paragraph 42). Accordingly, it must be observed that, on account of its positioning and its place in the mark applied for, that public will pay more attention to the element consisting of that word, regardless of its particular meaning to that public. The Board of Appeal was therefore right to conclude, in paragraph 28 of the contested decision, that that word would be perceived as the dominant element in the overall impression produced by the mark applied for.

53 In those circumstances, the findings of the Board of Appeal that, on the one hand, the dominant element of the mark applied for is the element ‘pallas’ and, on the other, the element ‘halloumi’ plays a secondary role in the perception of the sign Pallas Halloumi by the relevant public must be confirmed.

- 54 In the second place, as regards the examination of the similarity of the signs at issue, the Board of Appeal found, in paragraphs 27 to 31 of the contested decision, that the visual similarity was low, the phonetic similarity was average and there was no conceptual similarity. In the context of that assessment, it took account of the degree of distinctiveness and of the dominant elements of those signs, namely the element ‘pallas’, as regards the mark applied for.
- 55 The Republic of Cyprus argues in its application that the signs at issue are wholly visually similar, since the earlier mark is reproduced in full as the visual element of the mark applied for. It further criticises the Board of Appeal for having taken into account the graphic stylisation of the mark applied for, even though that stylisation is not relevant in the context of a comparison with a word mark. It further criticises the Board of Appeal for having neglected the importance of the element ‘halloumi’ in the mark applied for, even though it is positioned in front of the element ‘pallas’, in the same colour and font, such that the two elements comprising that mark are of equal importance. For the Republic of Cyprus, the visual similarity is therefore high or at least average.
- 56 On the conceptual front, the Republic of Cyprus repeats the argument that the United Kingdom public understands the earlier mark as distinguishing goods in one class of from those in another. The mark applied for is therefore perceived by the public as comprising, firstly, the word element ‘halloumi’ which presents a high level of conceptual similarity with the earlier mark, and, secondly, the verbal element ‘pallas’, which designates the specific individual user authorised by its owner to use the certification mark in accordance with the characteristics of that class of goods. The Board of Appeal ought to have taken into account market practices as regards certification marks and, in particular, the usual association of a certification mark, such as HALLOUMI, with other elements such as ‘pallas’, referring to a particular user authorised to use it by the owner of the mark.
- 57 EUIPO and the intervener dispute the arguments of the Republic of Cyprus.
- 58 As regards the visual comparison, it must be recalled, firstly, that there is nothing to prevent any visual similarity between a word mark and a figurative mark being determined, since both types of mark have a graphic form capable of creating a visual impression (see judgment of 4 May 2005, *Chum v OHIM — Star TV (STAR TV)*, T-359/02, EU:T:2005:156, paragraph 43 and the case-law cited).
- 59 As referred to in paragraph 51 above, the mark applied for is a figurative mark composed of the terms ‘pallas’ and ‘halloumi’, written in white, bold letters. Each word is written on a red oval background. The word ‘pallas’ appears on the oval background located in the upper part of the sign at issue and in a font of a size greater than that of the word ‘halloumi’, which is situated in the lower oval background. The earlier mark, as a word mark, is composed of the word ‘halloumi’.
- 60 As stated in paragraph 52 above, the relevant public will pay more attention to the element ‘pallas’ which appears as the dominant element of the mark applied for. Thus, the argument of the Republic of Cyprus that there is a complete visual similarity of the signs at issue because the element forming the earlier mark appears in full in the mark applied for cannot be upheld. Indeed, having regard to the established case-law reiterating the need for an overall assessment of the various components of the signs at issue, in particular the dominant and distinctive elements (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 35 and the case-law cited), the visual comparison must be made taking account of the fact that the element ‘pallas’ forms the upper part of the sign, which is, moreover, larger than the second part, which, although placed graphically in the foreground, is nonetheless relegated to the background in the overall visual impression. Thus, an initial significant difference at the visual level must be recognised, resulting from the lack of the term ‘pallas’ in the earlier mark.

- 61 Furthermore, the mark applied for contains figurative elements, such as the two red ovals and specific graphic stylisation, which constitute a second significant difference between the signs at issue. It must therefore be held that those signs coincide only in the element 'halloumi'. The view must therefore be taken that, as regards that element, due to the size of its font and its place within the mark applied for, the public will accord it only secondary importance.
- 62 The Board of Appeal therefore did not err in finding, in paragraph 29 of the contested decision, that there was a low visual similarity between the signs at issue.
- 63 Secondly, as regards the phonetic comparison, it must be noted that the signs at issue have in common only the term 'halloumi', located in second position in the mark applied for. Thus, there is a significant difference between those signs, having regard to the presence of the word 'pallas' in the mark applied for.
- 64 It is therefore necessary to confirm the finding of the Board of Appeal that the phonetic similarity of the signs at issue is average. Moreover, that finding does not appear to be disputed by the parties.
- 65 Thirdly, as regards the conceptual comparison, it is necessary to reject the argument of the Republic of Cyprus that the Board of Appeal failed to take into account the practice of the users of the earlier mark, which consists of the combination of the term 'halloumi' and the trade name of the user authorised to make use of that mark. Indeed, as stated in paragraph 42 above, the relevant public will perceive the word 'halloumi' as an indication of a type of cheese produced in Cyprus. It must therefore be held, contrary to the submissions of the Republic of Cyprus, that the word 'halloumi' is descriptive in relation to the goods in question. Its presence in the mark applied for does not therefore constitute a significant element in conceptual terms. Indeed, it has not been established that the public would understand it as a reference to a certification process to which the user of the trade mark is subject.
- 66 In addition, in so far as the term 'pallas' has no particular meaning for the relevant public and is unconnected with the earlier mark, it introduces a significant difference between the signs at issue on a conceptual level. The relevant public will understand it as an indication of the commercial origin of the goods in question.
- 67 It thus appears that the Board of Appeal did not err in concluding that there was a lack of conceptual similarity between the signs at issue capable of giving rise to a likelihood of confusion.
- 68 It follows that the second part of the plea must be rejected.

– *The third part, alleging an error in the overall assessment of the likelihood of confusion*

- 69 The contested decision contains the finding that, given the presence in the mark applied for of the element 'pallas', the differences between the signs at issue are sufficient to find that there was no likelihood of confusion, having regard to the weak distinctive character of the earlier mark, even though the marks at issue designate identical products.
- 70 The Republic of Cyprus argues that the assessment of the likelihood of confusion made by the Board of Appeal is flawed, owing to an erroneous analysis of the distinctive character of the earlier mark when comparing the signs at issue.
- 71 Furthermore, the Republic of Cyprus alleges that the Board of Appeal did not correctly analyse the evidence submitted. First of all, the Board of Appeal erred in considering that none of the evidence submitted supported the claim that the public perceived the term 'halloumi' as a reference to a certification. National law does not in fact require that the public perceive the earlier mark as such a

reference, or that certification be carried out at all. The only requirement under national law is that the public perceive the sign as distinguishing one class of goods with certain uniform characteristics from those in another class.

- 72 Next, there is no requirement under national law for a mark to state that it is a certification mark, particularly on the packaging of the goods. Nor is there any requirement that the public have knowledge of the body which holds the certification mark.
- 73 Finally, the Republic of Cyprus claims that the Board of Appeal erred in finding that enforcement activity regarding the certification standards in order to prevent their distinctive character being undermined by use for goods outside their scope is irrelevant to the public perception of the sign at issue. The fact that the other parties do not produce any evidence to show use by third parties of the term ‘halloumi’ other than to designate goods which comply with the certification standards is a reason to find the earlier mark distinctive as a United Kingdom certification mark.
- 74 EUIPO and the intervener dispute the arguments of the Republic of Cyprus.
- 75 A global assessment of the likelihood of confusion implies some interdependence between the factors taken into account and, in particular, between the similarity of the trade marks and that of the goods or services covered. Accordingly, a low degree of similarity between those goods or services may be offset by a high degree of similarity between the marks, and vice versa (judgments of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 17, and of 14 December 2006, *Mast-Jägermeister v OHIM — Licorera Zacapaneca (VENADO with frame and others)*, T-81/03, T-82/03 and T-103/03, EU:T:2006:397, paragraph 74).
- 76 As is apparent from recital 8 of Regulation No 207/2009 (now recital 11 of Regulation 2017/1001), the assessment of the likelihood of confusion depends on numerous elements, in particular the public’s recognition of the trade mark on the market in question. The more distinctive the earlier mark, the greater will be the likelihood of confusion, and therefore marks with a high distinctive character, either per se or because of their recognition by the public, enjoy broader protection than marks with less distinctive character (see, by analogy, judgments of 11 November 1997, *SABEL*, C-251/95, EU:C:1997:528, paragraph 24; of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 18; and of 22 June 1999, *Lloyd Schuhfabrik Meyer*, C-342/97, EU:C:1999:323, paragraph 20).
- 77 Furthermore, a finding that the earlier mark has a weak distinctive character does not preclude a finding that there is a likelihood of confusion. Although the distinctive character of the earlier mark must be taken into account in assessing the likelihood of confusion, it is only one factor among others involved in that assessment. Thus, even in a case involving an earlier mark of weak distinctive character, there may be a likelihood of confusion on account, in particular, of a similarity between the signs and between the goods or services covered (see judgments of 13 December 2007, *Xentral v OHIM — Pages jaunes (PAGESJAUNES.COM)*, T-134/06, EU:T:2011:174, paragraph 45 and the case-law cited, and of 13 April 2011, *Sociedad Agrícola Requiringua v OHIM — Consejo Regulador de la Denominación de Origen Toro (TORO DE PIEDRA)*, T-358/09, not published, EU:T:2011:174, paragraph 45 and the case-law cited).
- 78 In the first place, it must be noted that it has been held that the signs at issue had a low visual similarity and an average phonetic similarity. On a conceptual level, the relevant public perceives the term ‘halloumi’ as a type of cheese in each of the signs at issue. In that regard, it must be found, as did the Opposition Division and the Board of Appeal in succession, that those signs are similar only as regards the descriptive element ‘halloumi’. Thus, it appears that the similarity of the signs at issue is not sufficient to offset the differences between them. The signs at issue are therefore only slightly similar.

79 In the second place, as regards the distinctive character of the earlier mark, it has been established in paragraph 47 above that it was weak due to the descriptive meaning of that mark in the minds of the relevant public.

80 The argument of the Republic of Cyprus that the special nature of the earlier mark has not been taken into account for the purposes of assessing its distinctive character by the Board of Appeal cannot be upheld. The Republic of Cyprus refers, in support of that argument, to two decisions from national case-law from which it draws the conclusion that the distinctive character of a national certification mark lies in its ability to be perceived by the public as distinguishing one class of goods of another class of goods (see paragraph 34 above). However, as noted in paragraphs 40 and 45 above, that conception of the distinctive character of the earlier mark does not appear to be relevant and, in the present case, it has been found that the relevant public would not perceive the mark as an indication of any certification.

81 Moreover, as regards the taking into account of the national case-law relied on by the Republic of Cyprus, it has been stated in paragraph 40 above that the EU trade mark regime is an autonomous system whose application is independent of any national system. The interpretation of the decisions delivered by the national courts which the Republic of Cyprus wishes to invoke is therefore not relevant in the present case.

82 In the third place, as has been stated in paragraph 77 above, it must, however, be recalled that, even in a case involving an earlier mark of weak distinctive character, there may be a likelihood of confusion, in particular where the goods in question are identical and the signs at issue are similar.

83 Nonetheless, although, in the present case, the goods in question are identical, because of the weak distinctive character of the earlier mark and its descriptive meaning, the mere identity of the goods and the similarity of the conflicting signs as regards the common presence of the descriptive term 'halloumi' is not sufficient to create a likelihood of confusion.

84 It follows that the Board of Appeal rightly found that there is no likelihood of confusion.

85 Thus, it is necessary to reject the third part and, accordingly, the single plea in law alleging infringement of Article 8(1)(b) of Regulation No 207/2009, with the result that the action must be dismissed in its entirety.

### **Costs**

86 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

87 Since the Republic of Cyprus has been unsuccessful, it must be ordered to pay the costs, in accordance with the forms of order sought by EUIPO and the intervener.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

**1. Dismisses the action;**

**2. Orders the Republic of Cyprus to pay the costs.**

Prek

Schalin

Costeira

Delivered in open court in Luxembourg on 13 July 2018.

E. Coulon  
Registrar

I. Pelikánová  
President