In its second plea, the appellant submits that the GC infringed Article 7(1)(a) and 4 CTMR due to an incorrect and impermissible interpretation of the *Heidelberger Bauchemie* ([3]) judgment in that it imposed three cumulative requirements for the graphic representation of colour combination marks, namely (i) the precise shades of the colours in question, (ii) the ratios of the colours in question and (iii) the spatial arrangement of the colours. These requirements were not essential to that decision, and have a disproportionately harsh effect solely on the category or class of marks or signs consisting of colour combination or colour, per se, signs. Moreover, the third, and newly imposed, cumulative requirement is said to be justified by the alleged 'limited intrinsic ability of colours to convey precise meaning'. However, the latter was until now reviewed under the distinctiveness limb of the registerability test of a mark and not under the graphic representation requirement, which means that from the outset it results in the invalidity of a registration without an option to show acquired distinctiveness or otherwise cure it. The contested decision also infringes Article 4 CTMR by requiring an 'explicit' description for the type of marks at issue and by unlawfully reducing the effective definition of such marks only to those having one spatial (in other words figurative) arrangement corresponding to the supposed actual subsequent use of the mark.

In its third plea, the appellant submits that the GC infringed the principle of the protection of legitimate expectation by failing to appreciate and take into account in its decision that the first contested mark was filed prior to the *Heidelberger Bauchemie* judgment and thus disregarding the potential application of the principles set out by the Court's rulings in *Lambretta* ([4]) and *Cactus* ([5]). It also infringed this principle by not carrying out an overall assessment of authorised and reliable sources, applicable rules and provisions, case law of the EU and the defendant's Guidelines to determine if all the relevant circumstances of the present case could cumulatively give rise to the finding that the defendant gave the appellant precise, unconditional and consistent assurances, which the appellant relied upon by complying with their terms, which led to the entertaining of a valid legitimate expectation on the appellant's part.

In its fourth plea, the appellant submits that the GC infringed the principle of proportionality by not considering the disproportionality of the cancellation of both contested marks in the exceptional circumstances of the present case. In particular, the GC failed to consider that the objectives of precision and clarity, as well as legal certainty, could legitimately be met if the appellant was invited and permitted to clarify the description of both marks so that they remained on the register, rather than cancelling both registrations.

In its fifth plea, the appellant submits that the GC breached its rules of procedure by incorrectly applying Article 134(1) of the rules and ordering the appellant to pay the costs of the proceedings. The exceptional circumstances of the present case and the principle of equity require, according to Article 135(1) of the rules of procedure, that the appellant should not be ordered to bear the costs of the proceedings (and that the costs of the proceedings be borne by the defendant).

([1]) 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]) Judgment of 6 May 2003, Libertel, C-104/01, EU:C:2003:244.
([3]) Judgment of 24 June 2004, Heidelberger Bauchemie, C-49/02, EU:C:2004:384.
([4]) Judgment of 16 February 2017, Brandconcern BV v. EUIPO and Scooters India (Lambretta), C-577/14 P, EU:C:2017:122.
([5]) Judgment of 11 October 2017, EUIPO v. Cactus SA (Cactus), C-501/15 P, EU:C:2017:750.

Action brought on 22 March 2018 — European Commission v Kingdom of Spain

(Case C-207/18)

(2018/C 200/28)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: É. Gippini Fournier, G. von Rintelen and J. Samnadda, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt, by 10 April 2016 at the latest, all of the laws, regulations and administrative provisions necessary to comply with Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ([1]) or, in any event, by failing to notify those measures to the Commission, the Kingdom of Spain has failed to fulfil its obligations under Article 43 of that directive;

— impose on the Kingdom of Spain, in accordance with Article 260(3) TFEU, a daily penalty payment of EUR 123 928,64, with effect from the date of delivery of the judgment declaring the failure to fulfil the obligation to adopt, or, in any event, to notify to the Commission, the measures necessary to comply with Directive 2014/26/EU;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Under Article 43(1) of Directive 2014/26/EU, Member States were required to adopt and publish, by 10 April 2016 at the latest, the laws, regulations and administrative provisions necessary to comply with that directive, and immediately to inform the Commission thereof.

Given that the Kingdom of Spain has failed fully to transpose Directive 2014/26/EU and has failed to notify the Commission of the transposition measures, the Commission has instituted the present proceedings before the Court of Justice.

The Commission proposes that the Kingdom of Spain should be ordered to pay, from the date of delivery of the judgment, a daily penalty of EUR 123 928,64, calculated with due regard to the seriousness and duration of the infringement as well as to the need to ensure a deterrent effect in the light of the financial capacity of that Member State.

([1]) OJ 2014 L 84, p. 72.

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 23 March 2018 — Jana Petruchová v FIBO Group Holdings Ltd

(Case C-208/18)

(2018/C 200/29)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: Jana Petruchová

Defendant: FIBO Group Holdings Ltd