Parties to the main proceedings

Applicant: Hubert Pagnoul

Defendant: Belgian State — SPF Finances

Question referred

Does Article 6 of Title I, 'Common Provisions', of the Treaty of Lisbon of 13 December 2007 amending the Treaty on European Union, signed at Maastricht on 7 February 1992, in force since 1 December 2009 (substantially reproducing the provisions previously contained in Article 6 of Title I of the Treaty on European Union signed at Maastricht on 7 February 1992, which itself entered into force on 1 November 1993) and Article 234 (formerly 177) of the Treaty establishing the European Community (EC Treaty) of 25 March 1957, on the one hand, and/or Article 47 of the Charter of Fundamental Rights of the European Union of 7 December 2000, on the other hand, preclude a national Law, such as that of 12 July 2009 amending Article 26 of the Special Law of 6 January 1989 on the Cour d'Arbitrage, ([1]) from requiring prior recourse to the Cour Constitutionnelle by a national court which finds that a taxpaying citizen is deprived of the effective judicial protection guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated in Community law, by another national Law, namely Article 49 of the Programmatic Law of 9 July 2004, without that court being able immediately to ensure the direct applicability of Community law to the dispute before it or being able to scrutinise compliance with that convention when the Cour Constitutionnelle has recognised the compatibility of the national law with the fundamental rights guaranteed by Title II of the Constitution?

([1]) *Moniteur belge*, 31 July 2009, p. 51617.

Appeal brought on 2 July 2010 by Union Investment Privatfonds GmbH against the judgment of the General Court (Third Chamber) delivered on 27 April 2010 in Joined Cases T-303/06 and T-337/06 UniCredito Italiano SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) — Union Investment Privatfonds GmbH

(Case C-317/10 P)

(2010/C 246/43)

Language of the case: Italian

Parties

Appellant: Union Investment Privatfonds GmbH (represented by: J. Zindel, Rechtsanwalt)

Other parties to the proceedings: UniCredito Italiano SpA and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

— Set aside the judgment of 27 April 2010 in Joined Cases T-303/06 and T-337/06 in its entirety;

— Dismiss the applications of UniCredito Italiano SpA;

— Annul the decision of the Board of Appeal of OHIM of 5 September 2006 in Case R 196/2005-2 and uphold the opposition proceedings brought by the appellant against registration of the Community trade mark 2 236 164 'UNIWEB' with regard to the service 'real-estate affairs';

— Annul the decision of the Board of Appeal of OHIM of 25 September 2006 in Case R 502/2005-2 and uphold the opposition proceedings brought by the appellant against registration of the Community trade mark 2 330 066 'UniCredit Wealth Management' with regard to the service 'real-estate affairs'.

Pleas in law and main arguments

The appellant submits that the final half-sentence of Article 8(1)(b) of Regulation (EC) No 40/94 ([1]) has been incorrectly applied. In addition, it submits that the contested decision was taken on the basis of some of the facts only, which failed in part to reflect the actual position.

Unlike OHIM which had correctly upheld the substance of the appellant's claims, the General Court erred in failing to recognise that the marks at issue belong to a large family of marks. It is submitted that all the marks comprising that family each contain the same initial syllable, followed directly by another investment-sector concept. The marks of UniCredito Italiano SpA also displayed the same distinctive elements of that series. The General Court erred in starting from the premiss that the marks under comparison were structurally different on the basis that the initial syllable of UniCredito Italiano SpA's marks is followed by an element in English, whereas the initial syllable of the appellant's marks is followed by one in German. Nevertheless, the General Court failed to have due regard to the fact that because the marks form part of a series, all the marks in a family of marks must be taken into consideration when applying the final half-sentence of Article 8(1)(b) of Regulation (EC) No 40/94. In that regard, it must be emphasised that the appellant also uses English-language and international elements, so that the General Court's opposing point of view is objectively mistaken.

The appellant further submits that the General Court also erred in assuming that the marks used by it in respect of investment funds are always used in conjunction with the name of the issuing institution. That is, however, refuted by the evidence already submitted to OHIM by the appellant, from which it is clear, as has been outlined, that in press articles on funds, or during the provision of investment advice, the name of the issuing institution is not referred to.

The appellant emphasises that the judgment under appeal is inadequately reasoned since it is not apparent how the General Court managed to determine the German public's point of view, which is of crucial importance in analysing the likelihood of confusion.

However, determining that point of view was necessary, given that by submitting various decisions of the Deutsches Patent- und Markenamt (DPMA) (German Patent and Trade Mark Office) and other German courts, the appellant proved that the DPMA and the German courts assume that there is confusion on the part of the German public where certain marks containing the same initial syllable as that in the appellant's series of marks are registered or used by third parties in order to designate services in the financial sector.

Lastly, it is submitted that, like OHIM beforehand, the General Court failed to realise that there is a likelihood of confusion due to the similarity of services also in the 'real-estate affairs' sector. In the case of the real-estate funds covered by the appellant's marks, the appellant states that the increase in value expected by the investor is achieved by means of the management, leasing or sale of real estate. The appellant therefore submits that both OHIM and the General Court erred in assuming that managing a real-estate fund is limited to raising capital. In so far as OHIM attributed only property-brokerage activities to 'real-estate affairs', this fails to take due account of the fact that the concept of 'real-estate affairs' is much broader.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Reference for a preliminary ruling from the Cour de Cassation (Belgium) lodged on 2 July 2010 — SIAT SA v Belgian State

(Case C-318/10)

(2010/C 246/44)

Language of the case: French

Referring court

Cour de Cassation

Parties to the main proceedings

Appellant: SIAT SA

Respondent: Belgian State

Question referred

Must Article 49 of the EC Treaty, in the version applicable to this case (the facts giving rise to the dispute having occurred prior to the entry into force of the Treaty of Lisbon on 1 December 2009), be interpreted as precluding national legislation of a Member State according to which payments for supplies or services are not to be regarded as deductible business expenses where they are made or attributed directly or indirectly to a taxpayer resident in another Member State or to a foreign establishment which, by virtue of the legislation of the country in which they are established, are not subject there to a tax on income or are subject there, for the relevant income, to a tax regime which is appreciably more advantageous than the one to which such income is subject in the Member State whose national legislation is at issue, unless the taxpayer proves, by any legal means, that such payments relate to genuine and proper transactions and do not exceed the normal limits, whereas such proof is not required, as a precondition for the deduction of payments for supplies or services made to a taxpayer residing in that Member State, even if the taxpayer is not subject to any tax on income or is subject to a tax regime which is appreciably more advantageous than the one laid down by the ordinary law of that State?

Reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands), lodged on 2 July 2010 — X v Inspecteur der Belastingdienst/Y

(Case C-319/10)

(2010/C 246/45)

Language of the case: Dutch

Referring court

Rechtbank Haarlem

Parties to the main proceedings

Applicant: X

Defendant: Inspecteur der Belastingdienst/Y