

Questions referred

1. Does a technical function that precludes protection within the meaning of Article 8(1) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs ⁽¹⁾ also exist if the design effect is of no significance for the product design, but the (technical) functionality is the sole factor that dictates the design?
2. If the Court answers Question 1 in the affirmative:

From which point of view is it to be assessed whether the individual design features of a product have been chosen solely on the basis of considerations of functionality? Is an 'objective observer' required and, if so, how is such an observer to be defined?

⁽¹⁾ OJ 2002 L 3, p. 1.

**Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 27 July 2016 —
Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung e.V.**

(Case C-414/16)

(2016/C 419/36)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Vera Egenberger

Defendant: Evangelisches Werk für Diakonie und Entwicklung e.V.

Questions referred

1. Is Article 4(2) of Directive 2000/78/EC ⁽¹⁾ to be interpreted as meaning that an employer, such as the defendant in the present case, or the church on its behalf, may itself authoritatively determine whether adherence by an applicant to a specified religion, by reason of the nature of the activities or of the context in which they are carried out, constitutes a genuine, legitimate and justified occupational requirement, having regard to the employer/church's ethos?
2. If the first question is answered in the negative:

In a case such as the present, is it necessary to disapply a provision of national law — such as, in the present case, the first alternative of Paragraph 9(1) of the AGG (Allgemeines Gleichbehandlungsgesetz, General Law on equal treatment) — which provides that a difference of treatment on the ground of religion in the context of employment with religious bodies and the organisations adhering to them is also lawful where adherence to a specific religion, in accordance with the self-conception of the religious body, having regard to its right of self-determination, constitutes a justified occupational requirement?

3. If the first question is answered in the negative, further:

What requirements are there as regards the nature of the activities or of the context in which they are carried out, as genuine, legitimate and justified occupational requirements, having regard to the organisation's ethos, in accordance with Article 4(2) of Directive 2000/78/EC?

⁽¹⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303, p. 16.

Appeal brought on 28 July 2016 by mobile.de GmbH, formerly mobile.international GmbH, against the judgment of the General Court (Eighth Chamber) delivered on 12 May 2016 in Joined Cases T-322/14 and T-325/14, mobile.international v EUIPO — Rezon

(Case C-418/16 P)

(2016/C 419/37)

Language of the case: German

Parties

Appellant: mobile.de GmbH, formerly mobile.international GmbH (represented by: T. Lührig, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Rezon OOD

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the Eighth Chamber of the General Court of 12 May 2012 in Joined Cases T-322/14 and T-325/14;
- order the European Union Intellectual Property Office to pay the costs of the proceedings.

Grounds of appeal and main arguments

The judgment under appeal infringes Article 57(2) of Regulation (EC) No 207/2009, ⁽¹⁾ read in conjunction with Rules 22(2) and 40(6) of Regulation (EC) No 2868/95, ⁽²⁾ because it interprets the well-defined concept of 'proof of use' in Article 57(2) of Regulation No 207/2009 and in Rules 22(2) and 40(6) of Regulation No 2868/95 differently, contrary to the generally recognised interpretative principles of legal methodology. The divergent interpretation of the same term in Regulation No 207/2009 and in Regulation No 2868/95 is incompatible with the principles of legal certainty and legal clarity. Moreover, the General Court disregards the fact that Rules 40(6) and 22(2) of Regulation No 2868/95 exclude a late submission of evidence of use in cancellation proceedings and that EUIPO has no discretion in that regard. Article 57(1) of Regulation No 207/2009 is not applicable and EUIPO has not made use of it, with the result that the decision of the Boards of Appeal and of the General Court cannot be based on it.

The judgment under appeal also infringes Article 76(2) of Regulation No 207/2009 inasmuch as the General Court erred in law by assuming that Article 76(2) of Regulation No 207/2009 was applicable, even though Rules 40(6) and 22(2) of Regulation No 2868/95 preclude its applicability to invalidity proceedings due to the systematic interpretation of Rule 50(1)(3) of Regulation No 2868/95.

Moreover, the requirements of Article 76(2) of Regulation No 207/2009 were not satisfied because the intervener did not at any point in the proceedings put forward any legitimate reason for the late submission of the invoices that had been available to it from the outset. The General Court therefore incorrectly applied Article 76(2) of Regulation No 207/2009, because the stage of the proceedings reached and the surrounding circumstances already meant that no account could be taken of the evidence that had been submitted late. In addition, the General Court distorted the facts by wrongly setting out the factual background, with the result that the invoices submitted at the appeal stage did not constitute 'additional' or 'clarifying' evidence in that regard.

The General Court did not examine either the phonetic or the conceptual differences between the signs actually used and, on the whole, did not base itself on the overall impression of the signs, but rather took into account only individual elements, therefore incorrectly applying Article 15(1)(a) of Regulation No 207/2009.