Appeal brought on 21 November 2017 by VM Vermögens-Management GmbH against the judgment of the General Court (Sixth Chamber) of 7 September 2017 in Case T-374/15, VM Vermögens-Management v European Union Intellectual Property Office (EUIPO)

(Case C-653/17 P)

(2018/C 094/04)

Language of the case: German

Parties

Appellant: VM Vermögens-Management GmbH (represented by: T. Dolde and P. Homann, Rechtsanwälte)

Other parties to the proceedings: European Union Intellectual Property Office, DAT Vermögensmanagement GmbH

Form of order sought:

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 7 September 2017 in Case T-374/15;

— refer the case back to the General Court of the European Union.

Grounds of appeal and main arguments

The first ground of appeal alleges infringement of Article 65(2) of the EU trade mark regulation, ([1]) in conjunction with the right to be heard under Article 47 of the Charter of Fundamental Rights of the European Union and the right to property under Article 17 of the Charter of Fundamental Rights of the European Union. This ground is based on the assertion that the General Court did not take into account the retroactive effect of the amendment of the list of services of the EU trade mark '*Vermögensmanufaktur*' which resulted from a declaration made under Article 28(8) of the EU trade mark regulation and that the contested decision also annulled the EU trade mark for the newly-added services, without examining the registrability of the EU trade mark in that respect. The General Court should therefore not have rejected as inadmissible the appellant's claim seeking to have the contested decision altered.

The second ground of appeal alleges infringement of Article 36 of the Statute of the Court of Justice, in so far as the General Court rejected as inadmissible in its entirety the appellant's claim seeking to have the contested decision altered, without ruling on the merits of the retroactive effect of the amendment of the list of services of the EU trade mark '*Vermögensmanufaktur*' resulting from a declaration under Article 28(8) of the EU trade mark regulation.

The third ground of appeal alleges infringement of Article 7(1)(c) of the EU trade mark regulation, in so far as the General Court's findings in regard to descriptive character were based on incorrect considerations concerning the relevant public's perception of the designation '*Vermögensmanufaktur*' and that there is no sufficiently direct and specific link between the EU trade mark and the contested services as they are described which would allow the EU trade mark to be regarded as descriptive.

The fourth ground of appeal alleges infringement of Article 7(1)(b) of the EU trade mark regulation, in so far as the General Court justified the lack of distinctive character of the EU trade mark solely on the basis that '*Vermögensmanufaktur*' would be perceived by the relevant public as a laudatory slogan and as promotional information, without explaining why the EU trade mark could not also at the same time serve as a distinctive indication of origin.

The fifth ground of appeal alleges infringement of the second sentence of Article 75 of the EU trade mark regulation, in so far as the General Court rejected the argument that there had been an infringement of the right to be heard for the sole reason that the documents which had been submitted late in the proceedings before EUIPO were not taken into account in the assessment carried out by the Board of Appeal and the contested decision was not based on those documents, even though it is clear from the case-file that the Board of Appeal copied its decision word for word from that evidence and did not at any time accord the appellant the opportunity to comment on that evidence.

The sixth ground of appeal alleges infringement of Article 76(2) of the EU trade mark regulation, in so far as the contested decision is based on evidence which, in the first instance before EUIPO, was submitted out of time, with the result that the Board of Appeal, in any event, should also have regarded that evidence as having been submitted out of time. The General Court, in the judgment under appeal, incorrectly concluded in this respect that that evidence had not been taken into account by the Board of Appeal and that it had not had a conclusive bearing on the contested decision.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

Appeal brought on 22 November 2017 by Bayerische Motoren Werke AG against the judgment of the General Court (Fifth Chamber) delivered on 12 September 2017 in Case T-671/14, Bayerische Motoren Werke AG v European Commission

(Case C-654/17 P)

(2018/C 094/05)

Language of the case: German

Parties

Appellant: Bayerische Motoren Werke AG (represented by: M. Rosenthal, G. Drauz and M. Schütte, Rechtsanwälte)

Other parties to the proceedings: European Commission, Freistaat Sachsen

Form of order sought

The appellant claims that the Court of Justice should:

1. set aside the judgment of the General Court of the European Union (Fifth Chamber) of 12 September 2017 in Case T-671/14;

2. annul, pursuant to the fourth paragraph of Article 263 TFEU, the Commission decision of 9 July 2014 in Case SA.32009 (2011/C), which is challenged in the application, in so far as it declares the amount exceeding the amount of EUR 17 million (EUR 28 257 273) of the aid applied for, in the amount of EUR 45 257 273, to be incompatible with the internal market; if and in so far as the Court of Justice should consider itself unable to deliver final judgment in that respect, referral of the case back to the General Court of the European Union is sought in the alternative;

3. in the alternative, annul, pursuant to the fourth paragraph of Article 263 TFEU, the contested Commission decision of 9 July 2014 in Case SA.32009 (2011/C), in so far as it prohibits and declares incompatible with the internal market under Article 6(2) of the General Block Exemption Regulation, in the version of 6 August 2008, the granting of any registration-free aid for the appellant's investment projects, to the extent that that aid exceeds the amount of EUR 17 million;

4. order the respondent to pay the costs of the proceedings in accordance with Articles 138(1) and 184(1) and (2) of the Rules of Procedure of the Court of Justice.