Reports of Cases

JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

2 February 2017 *

(EU trade mark — Invalidity proceedings — EU word mark TOSCORO — Earlier protected geographical indication 'Toscano' — Absolute ground for refusal — Article 142 of Regulation (EC) No 40/94 — Articles 13 and 14 of Regulation (EEC) No 2081/92 — Declaration of partial invalidity)

In Case T-510/15,

Roberto Mengozzi, residing in Monaco (Monaco), represented by T. Schuffenecker, lawyer,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by A. Schifko and S. Crabbe, acting as Agents,

defendant,

supported by

Italian Republic, represented by G. Palmieri, acting as Agent,

intervener,

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

Consorzio per la tutela dell'olio extravergine di oliva Toscano IGP, established in Florence (Italy), represented by F. Albisinni, lawyer,

ACTION brought against the decision of the Second Board of Appeal of EUIPO of 5 June 2015 (Case R 322/2014-2), relating to invalidity proceedings between Consorzio per la tutela dell'olio extravergine di oliva Toscano IGP and Mr Mengozzi,

THE GENERAL COURT (Seventh Chamber),

composed of V. Tomljenović, President, A. Marcoulli (Rapporteur) and A. Kornezov, Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Court Registry on 7 September 2015,

* * Language of the case: English.

having regard to the response of EUIPO lodged at the Court Registry on 5 November 2015,

having regard to the response of the intervener lodged at the Court Registry on 17 November 2015,

having regard to the decision of the President of the Seventh Chamber of the General Court of 15 January 2016 granting the Italian Republic leave to intervene in support of the form of order sought by EUIPO,

having regard to the Italian Republic's statement in intervention lodged at the Court Registry on 1 March 2016,

having regard to the applicant's observations lodged at the Court Registry on 14 April 2016,

having regard to the reassignment of the case to the Seventh Chamber,

having regard to the change in the composition of the Chambers of the General Court,

having regard to the fact that no request for a hearing was submitted by the main parties within three weeks following service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

Judgment

Background to the dispute

1 On 17 June 2002, the applicant, Mr Roberto Mengozzi, filed an application for registration of an EU trade mark with the European Union Intellectual Property Office (EUIPO) pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1)).

2 Registration as a trade mark was sought for the word sign TOSCORO.

3 The goods for which registration was sought fall within Classes 29 and 30 of the Nice Agreement of 15 June 1957 concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as revised and amended, and correspond, for each of those classes, to the following description:

— Class 29: 'Edible oils fats; edible vegetable oils, notably olive oils; creams for food and in particular nut creams, artichoke creams in truffle sauce, green and black olive creams; mushrooms in sauce and dried mushrooms';

— Class 30: 'Coffee, coffee extracts and coffee-based preparations; coffee substitutes and extracts of coffee substitutes; tea, tea extracts and tea-based preparations; cocoa and preparations having a base of cocoa, chocolate, chocolate products, confectionery, sweets; sugar; natural sweeteners; bakery products, bread, yeast, pastries; biscuits; cakes, desserts, puddings; ices, products for making ices; honey and honey substitutes; breakfast cereals, rice, pastas, food products based on rice, flour

or cereals, also in the form of pre-cooked dishes; products for flavouring or seasoning foodstuffs, salad dressing, vinegar, mayonnaise, pizza, sauces and in particular tomato sauces and vegetable sauces'.

4 On 17 November 2003, the word sign TOSCORO was registered as an EU trade mark under number 002752509.

5 The registration of the contested mark was published in *Community Trade Mark Bulletin* No 2004/001 of 5 January 2004.

6 On 10 December 2012, the intervener, Consorzio per la tutela dell'olio extravergine di oliva Toscano IGP, filed an application for a declaration that the contested mark was invalid on the basis of Article 7(1)(c), (g) and (k) of Regulation No 207/2009, read in conjunction with Article 52(1)(a) of that regulation.

7 The application for a declaration of invalidity was based on the protected geographical indication (PGI) 'Toscano' registered in the European Union pursuant to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) (replaced by Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12), itself replaced by Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1)). The registration of the PGI 'Toscano' was granted for the product 'olive oil' by Commission Regulation (EC) No 644/98 of 20 March 1998 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation No 2081/92 (OJ 1998 L 87, p. 8).

8 The application for a declaration of invalidity concerned all of the goods covered by the contested mark.

9 On 29 November 2013, the Cancellation Division granted the application for a declaration of invalidity for certain goods in Class 29 ('edible oils fats'; 'edible vegetable oils, notably olive oils') and in Class 30 ('products for flavouring or seasoning foodstuffs, salad dressing').

10 On 27 January 2014, the applicant filed a notice of appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009, against the decision of the Cancellation Division. The intervener also brought a cross-appeal against that decision.

11 By decision of 5 June 2015 ('the contested decision'), the Second Board of Appeal of EUIPO partially upheld the appeal and cross-appeal brought, respectively, by the applicant and the intervener. In the first place, it stated that Article 7(1)(k) of Regulation No 207/2009 did not apply to the present case inasmuch as that provision was not in force at the date on which the contested mark was filed. In the second place, referring to Article 142 of Regulation No 40/94, the Board of Appeal held that Article 13(1) and Article 14(1) of Regulation No 2081/92 were directly applicable in the present case. On that basis, taking account of the visual and phonetic similarities of the signs at issue, it held that the use of the sign TOSCORO amounted to an evocation of the PGI at issue for certain goods in Class 29 ('edible oils fats'; 'edible vegetable oils, notably olive oils' and 'green and black olive creams') and that the contested mark should be declared invalid in relation to those goods.

Forms of order sought

12 The applicant claims that the Court should:

— set aside the contested decision in so far as the Board of Appeal considered that the contested mark was invalid for the goods 'edible oils fats', 'edible vegetable oils, notably olive oil' and 'green and black olive creams';

— declare the contested mark to be valid and maintain it on the register of EU marks for the goods mentioned above;

— order EUIPO and the intervener to pay the costs, including the costs incurred before the Board of Appeal.

13 EUIPO and the intervener contend that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

14 The Italian Republic contends that the Court should dismiss the action.

Law

15 In support of the action, the applicant puts forward three pleas in law. The first plea alleges infringement of Article 7(1)(k) of Regulation No 207/2009 and of Article 6(1) of Regulation No 1151/2012. The second plea in law alleges an error of assessment in the analysis of the similarity of the signs at issue in the context of Article 13(1)(b) of Regulation No 1151/2012. The third plea in law alleges infringement of Article 15 of the Agreement on the Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 (OJ 1994 L 336, p. 214) ('the TRIPS Agreement'), which forms Annex 1 C to the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3).

The first plea in law, alleging infringement of Article 7(1)(k) of Regulation No 207/2009 and of Article 6(1) of Regulation No 1151/2012

16 The applicant states that he does not dispute the applicability of Article 7(1)(k) of Regulation No 207/2009 in the present case. He takes the view, however, that the Board of Appeal erred in its assessment of the application of that provision. In particular, the applicant argues that the word 'toscano' refers to a person living in the region of Tuscany, in Italy. Therefore, the PGI at issue is descriptive of all goods coming from that region and the word 'toscano' is a generic term, for example for olive oil. The applicant states that Article 6(1) of Regulation No 1151/2012 provides that PGIs 'shall not become generic'. In that context, he submits, the word 'toscoro', which does not in any way evoke the region of Tuscany, cannot be confused with the PGI at issue for olive oil or similar goods.

17 EUIPO, supported by the Italian Republic, and the intervener take issue with the applicant's arguments.

18 As a preliminary point, it should be pointed out that the words 'shall not become generic', cited by the applicant as being those of Article 6(1) of Regulation No 1151/2012, refer in fact to Article 13(2) of that regulation, which provides that 'protected designations of origin and protected geographical indications shall not become generic'.

19 It should be noted that, under the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of Article 53 thereof, and Article 177(1)(d) of the Rules of Procedure of the General Court, an application must set out a summary of the pleas in law on which it is based. That summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to decide the case, if appropriate without other information in support (see judgment of 29 March 2012, *Omya* v *OHIM — Alpha Calcit (CALCIMATT)*, T-547/10, not published, EU:T:2012:178, paragraph 19 and the case-law cited).

20 In the present case, although the applicant invokes Article 6(1) of Regulation No 1151/2012 in support of his plea in law, he cites the provisions of Article 13(2) of that regulation. Furthermore, nowhere in his application does the applicant state clearly in what respect the provisions relied on should have been applied by the Board of Appeal, nor why, in that context, it infringed Article 7(1)(k) of Regulation No 207/2009, also invoked by the applicant. Moreover, as is clear from paragraph 21 of the contested decision, the Board of Appeal held that Article 7(1)(k) of Regulation No 207/2009 did not apply in the present case. It is also apparent from the contested decision that the Board of Appeal applied the relevant provisions of Regulation No 2081/92 and not those of Regulation No 1151/2012, relied on by the applicant before the Court. Therefore, as EUIPO contends in its pleadings, the summary of the first plea in law does not meet the conditions laid down in Article 177(1)(d) of the Rules of Procedure.

21 For the sake of completeness, it should be noted that the purpose of bringing actions before the General Court is to review the legality of the decisions of the Boards of Appeal of EUIPO for the purposes of Article 65 of Regulation No 207/2009 and that, in proceedings for annulment, the legality of the contested measure must be assessed on the basis of the elements of fact and of law existing at the time when the measure was adopted. Therefore, it is not the Court's function to re-evaluate the factual circumstances in the light of evidence adduced for the first time before it (see judgment of 24 June 2014, *Unister* v *OHIM (Ab in den Urlaub)*, T-273/12, not published, EU:T:2014:568, paragraph 43 and the case-law cited). Facts which are pleaded before the Court without having previously been produced before the adjudicating bodies of EUIPO can affect the legality of such a decision only if EUIPO should have taken them into account of its own motion (see judgment of 6 February 2013, *Maharishi Foundation* v *OHIM (TRANSCENDENTAL MEDITATION)*, T-426/11, not published, EU:T:2013:63, paragraph 36 and the case-law cited). Moreover, under Article 188 of the Rules of Procedure, the pleadings lodged by the parties in proceedings before the General Court may not change the subject matter of the proceedings before the Board of Appeal.

22 As noted by EUIPO in its pleadings, the applicant never argued, before EUIPO's adjudicating bodies, that the PGI at issue had become generic or mentioned, in that respect, the provisions of Regulation No 1151/2012 on which he relied before the Court. Furthermore, there is nothing to suggest that EUIPO should have taken account, of its own motion, of the facts put forward before the Court, and indeed the applicant makes no such claim.

23 In the light of all of those factors, the first plea in law must be rejected as being inadmissible.

The second plea in law, alleging an error of assessment in the analysis of the similarity of the signs at issue

24 The applicant submits that, even if the PGI has not become generic, which he does not accept, the Board of Appeal made an error of assessment in its analysis of the similarity of the signs at issue in the context of the application of Article 13(1)(b) of Regulation No 1151/2012. Phonetically, he submits, the word 'toscoro' is pronounced, at least in English, Italian and Spanish, with an emphasis on the final syllable. The word 'toscano' is pronounced, at least in English, with an emphasis on the middle syllable. The signs at issue are therefore different in this respect. They are also visually different, given their respective spellings. Finally, conceptually, the word 'toscoro' is an invented word, whereas the PGI at issue conveys the notion of olive oil from Tuscany. The signs at issue are, in that

regard also, different. The Board of Appeal should not have split up the contested mark and the PGI at issue. The applicant states, moreover, that the PGI at issue is not well known. In that context, the average consumer will not confuse the signs at issue and the applicant disputes the Board of Appeal's finding that the contested mark will evoke the PGI at issue. The applicant adds that the Board of Appeal made errors of assessment, first, by rejecting his argument that EUIPO had registered marks very similar to the PGI at issue and, second, by taking the view that olive cream is comparable to olive oil.

25 EUIPO, with the support of the Italian Republic, and the intervener take issue with the applicant's arguments.

26 As a preliminary point, it must be noted that, in the context of the second plea in law, the applicant disputes, first, the Board of Appeal's comparison of the signs at issue and, second, the finding that olive oil and green and black olive creams are goods of the same type.

27 In addition, it must be pointed out that, contrary to what the applicant claims, the Board of Appeal did not apply Article 13(1)(b) of Regulation No 1151/2012. After having taken the view that Article 7(1)(k) of Regulation No 207/2009 was not applicable in the present case (paragraph 21 of the contested decision), it explained that that provision had in fact merely codified the rules resulting from Article 13(1) and Article 14(1) of Regulation No 2081/92, which were, for their part, directly applicable to the present case pursuant to Article 142 of Regulation No 40/94. The Board of Appeal added that, while it was bound to uphold the same absolute ground of invalidity as that put forward by the party to the dispute, it was also bound to uphold it in accordance with the legislation in force on the date on which the contested mark was filed (paragraphs 27 and 28 of the contested decision). The applicant has not, however, challenged the Board of Appeal's reasoning in that regard before the Court.

28 On the question of the legislation applicable to the dispute, it must be noted that Article 142 of Regulation No 40/94, as it applies to the present case, provides that 'this Regulation shall not affect … Regulation … No 2081/92 …, and in particular Article 14 thereof'. The first subparagraph of Article 14(1) of Regulation No 2081/92, as it applies to the present case, provides in particular that: 'where a … geographical indication is registered in accordance with this Regulation, the application for registration of a trade mark corresponding to one of the situations referred to in Article 13 and relating to the same type of product shall be refused, provided that the application for registration of the trade mark was submitted after the date of the publication provided for in Article 6(2) [of that regulation]'. The second subparagraph of Article 14(1) of Regulation No 2081/92 provides that 'trade marks registered in breach of the first subparagraph [of Article 14(1)] shall be declared invalid'.

29 It follows that EUIPO is obliged to apply Regulation No 40/94 in such a way as not to affect the protection granted to PGIs by Regulation No 2081/92. In particular, EUIPO must, pursuant to Article 14(1) of Regulation No 2081/92, refuse to register any mark coming within one of the situations described in Article 13 of that regulation and relating to the same type of product and, if the mark has already been registered, must declare that registration to be invalid (see, to that effect, judgment of 12 September 2007, *Consorzio per la tutela del formaggio Grana Padano* v *OHIM — Biraghi (GRANA BIRAGHI)*, T-291/03, EU:T:2007:255, paragraphs 53 to 56).

30 In the present case, the Board of Appeal applied Article 13(1)(b) of Regulation No 2081/92, which provides that 'registered names shall be protected against … any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar'. Having regard to the visual and phonetic similarities between the signs at issue, the Board of Appeal concluded that the use of the sign TOSCORO amounted to an evocation of the PGI at issue for certain goods in Class 29.

31 The concept of 'evocation', set out in Article 13(1)(b) of Regulation No 2081/92, covers a situation where the term used to designate a product incorporates part of a protected designation, with the result that, when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product the designation of which is protected (judgments of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 25, and of 26 February 2008, *Commission* v *Germany*, C-132/05, EU:C:2008:117, paragraph 44). In that regard, the Court of Justice took into account the phonetic and visual similarity which might exist between the sales descriptions. The Court of Justice also noted that it is necessary, where appropriate, to take account of the 'conceptual proximity' between terms emanating from different languages. Finally, the Court of Justice held that there could be evocation of a protected designation even in the absence of any likelihood of confusion between the goods concerned, since what matters is, in particular, that an association of ideas regarding the origin of the products is not created in the mind of the public, and that a trader does not take undue advantage of the reputation of the PGI (see, by analogy, judgment of 21 January 2016, *Viiniverla*, C-75/15, EU:C:2016:35, paragraphs 33, 35 and 45 and the case-law cited).

32 Furthermore, in view of the objectives of Regulation No 2081/92, which consist, inter alia, in ensuring consumer protection (judgment of 25 June 2002, *Bigi*, C-66/00, EU:C:2002:397, paragraph 31), it is necessary to take account of the presumed expectation of the average consumer, who is reasonably well informed and reasonably observant and circumspect (see, by analogy, judgment of 21 January 2016, *Viiniverla*, C-75/15, EU:C:2016:35, paragraphs 24 and 25). It must also be noted that 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). Finally, taking into account the signs at issue, the consumer is the European Union consumer (see by analogy, judgment of 21 January 2016, *Viiniverla*, C-75/15, EU:C:2016:35, paragraph 27).

33 With regard to the comparison of the signs at issue, the applicant's arguments are based mainly, in substance, on the fact that the signs are different and that, as a consequence, the contested mark does not evoke the PGI at issue.

34 However, as the Board of Appeal rightly stated, the beginning of each sign is identical, namely the element 'tosc'. It must be noted, in this regard, that, in principle, a consumer usually pays more attention to the beginning of a sign than to its end (judgments of 16 March 2005, *L'Oréal* v *OHIM — Revlon (FLEXI AIR)*, T-112/03, EU:T:2005:102, paragraphs 64 and 65, and of 15 July 2015, *Westermann Lernspielverlag* v *OHIM — Diset (bambinoLÜK)*, T-333/13, not published, EU:T:2015:490, paragraph 26).

35 Furthermore, the final letters of the two signs at issue are also identical, namely the letter 'o'.

36 Thus, the signs at issue, each of which is composed of seven letters and three syllables, have in common five letters with identical positioning.

37 The Board of Appeal therefore did not make an error of assessment in finding that the signs at issue were visually highly similar, notwithstanding the difference created by the respective presence of the elements 'or' and 'an'. As the Board of Appeal rightly held, that difference, which concerns two letters in the middle of the signs at issue, does not offset the strong similarity found earlier and which concerns the beginning and the end of those signs.

38 Similarly, the Board of Appeal did not make an error of assessment in finding that the signs at issue bore a strong phonetic similarity. The signs at issue have in common their first and final syllables. The difference which relates to their middle syllable is not capable of bringing into question the strong similarity between the signs, as the Board of Appeal correctly held. As regards the applicant's

argument that the signs at issue are pronounced, in English, with differing emphasis, this cannot bring into question the phonetic similarity between them or the fact that, in other languages, they are pronounced with an identical tonic accent.

39 In the light of these elements, the view must be taken that there is visual and phonetic similarity between the signs at issue.

40 The applicant's argument, even assuming it to be established, seeking to claim that the word 'toscoro' is a made-up word, without any specific meaning, whereas the PGI at issue conveys the notion of olive oil from Tuscany, cannot lead to the conclusion that the contested mark does not evoke the PGI. Apart from the fact that that matter is not such as to bring into question the visual and phonetic similarity of the signs at issue, the link between the PGI and the protected product is inherent to the very nature of PGIs and cannot have the result of weakening the protection granted to them by EU law.

41 Having regard to those elements as a whole, and, in particular, to the visual and phonetic similarity between the signs at issue, the Board of Appeal did not err in its assessment in finding that the word 'toscoro' may evoke the PGI 'Toscano', when the consumer is confronted with goods of the same type as the product covered by the PGI. The visual and phonetic similarities will be such as to trigger in the consumer's mind, as a reference image, the image of the olive oil benefiting from the PGI 'Toscano', when he is confronted with a product of the same kind bearing the name 'toscoro' (see, to that effect, judgment of 26 February 2008, *Commission* v *Germany*, C-132/05, EU:C:2008:117, paragraph 48).

42 As regards the goods at issue, the applicant does not challenge the Board of Appeal's finding — which, moreover, is not vitiated by any error of assessment — that olive oil is included in the goods 'edible oils fats' and 'edible vegetable oils and notably olive oils' covered by the contested mark and featuring in Class 29. Those goods are therefore of the same type as the olive oil protected by the PGI at issue.

43 The applicant does, however, challenge the Board of Appeal's finding that the contested mark evokes the PGI at issue for the goods 'green and black olive creams', also featuring in Class 29.

44 It must be stated that Article 14(1) of Regulation No 2081/92, as it applies to the present case, provides for the refusal to register any mark which is in one of the situations set out in Article 13 of that regulation and relating to the same type of product. The product at issue need not therefore necessarily be identical to the product which was the subject of the PGI, but it must share some common characteristics with that product.

45 In that regard, it must be noted that olive creams, on the one hand, and olive oil, on the other, share an important characteristic, namely that they are foodstuffs derived from olives. Their main ingredient is therefore identical. Moreover, the applicant's manifestly unfounded assertion that olive creams are essentially 'cosmetics' must be rejected. In addition to the fact that there is nothing to support that assertion, it is at variance with the title and explanatory note relating to goods in Class 29 of the Nice Classification, which essentially relates to edible goods. Furthermore, the Board of Appeal rightly held, without the applicant producing any detailed evidence in that regard, that the concept of 'olive creams' was sufficiently vague to include creams made from olive oil and that there was therefore a definite closeness between olive creams and olive oil. It must, moreover, be noted, in this regard, that the evidence submitted to EUIPO by the intervener, in particular in the context of its observations dated 5 July 2013, shows that certain, olive-based, jarred culinary preparations include olive oil as an ingredient, benefiting, as appropriate, from the PGI at issue. Therefore, the Board of Appeal did not make an error of assessment in finding that olive creams were goods of the same type as the olive oil protected by the PGI at issue.

46 The other arguments put forward by the applicant are not such as to call those findings into question.

47 As regards the applicant's contention that EUIPO has registered marks very similar to the PGI at issue, it must be borne in mind that decisions concerning registration of a sign as a trade mark which the Boards of Appeal are called on to take under Regulation No 40/94 are adopted in the exercise of circumscribed powers and are not a matter of discretion. Accordingly, as rightly stated by the Board of Appeal, the legality of the decisions of the Boards of Appeal must be assessed solely on the basis of that regulation, as interpreted by the EU Courts, and not on the basis of any previous decision-making practice (judgment of 26 April 2007, *Alcon* v *OHIM*, C-412/05 P, EU:C:2007:252, paragraph 65). Furthermore, if it is assumed that, by his arguments, the applicant alleges, in fact, infringement of the principle of equal treatment, it must be borne in mind that observance of that principle has to be reconciled with observance of the principle of legality. Moreover, for reasons of legal certainty and of sound administration, the examination of any trade mark application must be stringent and full, and must be undertaken in each individual case (judgment of 10 March 2011, *Agencja Wydawnicza Technopol* v *OHIM*, C-51/10 P, EU:C:2011:139, paragraphs 75 and 77). For the aforementioned reasons, the Board of Appeal did not err in its assessment. It follows that the applicant cannot effectively rely on previous decisions of EUIPO for the purposes of casting doubt on the conclusion reached by the Board of Appeal in the contested decision (see, to that effect, judgment of 2 May 2012, *Universal Display* v *OHIM (UniversalPHOLED)*, T-435/11, not published, EU:T:2012:210, paragraph 39). Furthermore, it must be pointed out that the decisions of EUIPO relied on by the applicant related to signs that differ from those at issue in the present case.

48 As for the applicant's argument that the PGI at issue is not well known, and assuming that such an argument would be admissible before the Court, it is irrelevant since, as EUIPO states in its pleadings, the reputation of a PGI is not a condition for its protection.

49 In the light of all of the foregoing, the second plea must be rejected as being unfounded.

The third plea in law, alleging infringement of Article 15 of the TRIPS Agreement

50 The applicant submits that the contested mark meets the conditions set out in Article 15 of the TRIPS Agreement and that the PGI at issue meets those of Article 22 of that agreement. As the two registration schemes are mutually exclusive, according to the applicant, the contested mark should continue to stand on the Register of European Union marks.

51 EUIPO, supported by the Italian Republic, and the intervener take issue with the applicant's arguments.

52 It must be noted that, under Article 188 of the Rules of Procedure, the pleadings lodged by the parties in proceedings before the General Court cannot change the subject matter of the proceedings before the Board of Appeal.

53 As EUIPO rightly states in its pleadings, Article 15 of the TRIPS Agreement, read in conjunction with Article 22 of that agreement, was at no time invoked by the applicant before the adjudicating bodies of EUIPO.

54 It follows that the third plea in law must be rejected as inadmissible.

55 Accordingly, the action must be dismissed in its entirety, without it being necessary to rule on the admissibility of the second head of claim.

Costs

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

57 In addition, under Article 138(1) of the Rules of Procedure, the Member States which intervened in the proceedings are to bear their own costs.

58 Since the applicant has been unsuccessful, he must be ordered to pay the costs of EUIPO and the intervener, in accordance with the forms of order sought by them.

59 The Italian Republic shall bear its own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. Dismisses the action;

2. Orders Mr Roberto Mengozzi to pay, in addition to his own costs, the costs incurred by the European Union Intellectual Property Office (EUIPO) and by Consorzio per la tutela dell'olio extravergine di oliva Toscano IGP;

3. Orders the Italian Republic to bear its own costs.

Tomljenović Marcoulli Kornezov

Delivered in open court in Luxembourg on 2 February 2017.

E. Coulon V.
Tomljenović President
Registrar