Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber)

20 July 2016*

(EU trade mark — Proceedings for a declaration of invalidity — EU word mark SUEDTIROL — Article 7(1)(c) and Article 52(1)(a) of Regulation (EC) No 207/2009 — Absolute ground for refusal — Geographical indication of origin — Descriptive character)

In Case T-11/15,

Internet Consulting GmbH, established in Brunico (Italy), represented by L. Miori and A. Bertella, lawyers,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by A. Schifko, acting as Agent,

defendant,

Other party to the proceedings before the Board of Appeal of EUIPO, intervening before the General Court:

Provincia Autonoma di Bolzano-Alto Adige (Italy), represented by C. Volkmann, lawyer

intervener,

Action brought against the decision of the Grand Board of Appeal of EUIPO of 10 October 2014 (Case R 574/2013-G), relating to proceedings for a declaration of invalidity between the Provincia Autonoma di Bolzano-Alto Adige and Internet Consulting,

THE GENERAL COURT (Fourth Chamber),

composed of M. Prek (Rapporteur), President, I. Labucka and V. Kreuschitz, Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Court Registry on 9 January 2015,

having regard to the response of EUIPO lodged at the Court Registry on 19 June 2015,

having regard to the response of the intervener lodged at the Court Registry on 8 June 2015,

* Language of the case: German.

having regard to the fact that no request for a hearing was submitted by the main parties within three weeks after 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 19 August 2002, the applicant, Internet Consulting GmbH, filed an application for registration of an EU trade mark at the European Union Intellectual Property Office (EUIPO) in accordance with 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 Community trade mark (OJ 2009 L 78, p. 1)).

2 The mark for which registration was sought is the word sign SUEDTIROL.

3 The services in respect of which registration was applied for are in Classes 35, 39 and 42 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond, for each of those classes, to the following description:

— Class 35: ‘Business management; business administration; office functions’;

— Class 39: ‘Packaging and storage of goods’;

— Class 42: ‘Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services’.

4 The EU trade mark application was published in the *Community Trade Marks Bulletin* No 83/2003 of 24 November 2003. The mark was registered on 16 December 2011 under number 2826931.

5 On 3 January 2012, the intervener, Provincia Autonoma di Bolzano-Alto Adige (Autonomous Province of Bolzano-South Tyrol, Italy) sought a declaration of invalidity of the contested mark in relation to all the services described. It based its application on Article 52(1)(a) of Regulation No 207/2009, when read in conjunction with Article 7(1)(c) of that same regulation, to the extent that the contested mark constituted a geographical indication of origin, designating the autonomous region Trentino — South Tyrol (‘the South Tyrol region’), located in northern Italy.

6 By decision of 15 February 2013, the Cancellation Division rejected the application for a declaration of invalidity of the contested mark.

7 The intervener lodged an appeal against that decision under Article 58 et seq. of Regulation No 207/2009.

8 By decision of 3 April 2014, the First Board of Appeal referred the case to the Grand Board of Appeal.

9 By decision of 10 October 2014 ('the contested decision'), the Grand Board of Appeal upheld the intervener's action by declaring the contested mark to be invalid, pursuant to Article 52(1)(a) of Regulation No 207/2009, on the grounds that it had been registered contrary to the provisions of Article 7(1)(c) and 7(2) of that regulation.

10 In particular, in relation to the admissibility of the application for a declaration of invalidity, the Grand Board of Appeal found the application to be admissible since any natural or legal person has *locus standi* under Article 56(1)(a) of Regulation No 207/2009 and the concept of legal person included bodies established under public law, such as the intervener.

11 In relation to the assessment of the merits of the application for a declaration of invalidity, the Grand Board of Appeal observed, inter alia, that:

— the term 'Südtirol' was the name normally used in German for the northernmost province in Italy, being also one of the richest, the autonomy of which was recognised by the Italian constitution;

— since the existence of such a region was known to the relevant public, consisting at the very least of the Italian consumer and the German-speaking EU consumer aware of the existence of the South Tyrol region, the contested mark could be taken to indicate to that relevant public the geographical origin of the services that it covered;

— since the geographical origin of services was a characteristic of those services for the purposes of Article 7(1)(c) of Regulation No 207/2009, the word 'Südtirol' was a geographical indication of origin the protection of which was in the public interest;

— the designated services did not have any other special characteristics which would prevent the relevant consumer from associating the word 'Südtirol' with the geographical origin of the services;

— business and administration services, office functions, packaging and storage of goods, scientific and technological services, industrial analysis and research services, development of computer hardware and software and legal services, when offered under the contested mark, would be perceived by the relevant consumer as originating in the South Tyrol region, whether provided from that region or offered to businesses operating in that region;

— the fact that a considerable number of businesses active in the South Tyrol region had the words 'Südtirol' or 'Suedtirol' in their business names confirmed that the word constituted a geographical indication of origin.

Forms of order sought

12 The applicant claims that the Court should:

— annul or at least alter the contested decision, refusing in any event the application for a declaration of invalidity of the contested mark:

— order EUIPO to pay the costs.

13 EUIPO contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

14 The intervener claims that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

15 In support of its action, the applicant relies on two pleas in law, the first alleging an infringement and misapplication of Article 5 and Article 56 of Regulation No 207/2009 and the second alleging an infringement and misapplication of Article 7(1)(c), Article 12 and Article 52 of Regulation No 207/2009.

First plea, alleging an infringement and misapplication of Article 5 and Article 56 of Regulation No 207/2009

16 The applicant is of the opinion that, as a result of the combined effect of Article 5 and Article 56 of Regulation No 207/2009, the intervener, as a public body, did not have *locus standi* to bring an application for a declaration of invalidity. The applicant maintains that, since Article 5 of Regulation No 207/2009, which relates to persons who can be proprietors of EU trade marks, explicitly refers after 'any natural or legal person' to 'authorities established under public law', the fact that Article 56 of that regulation mentions only natural and legal persons excludes the ability of authorities established under public law to bring an application for a declaration of invalidity.

17 EUIPO and the intervener take issue with those arguments.

18 Article 5 of Regulation No 207/2009 contains a general definition of persons who can be proprietors of EU trade marks. It states that 'any natural or legal person, including authorities established under public law, may be the proprietor of a [European Union] trade mark'.

19 It follows that the reference to authorities established under public law is by way of an example of the legal persons who can be proprietors of such a trade mark and that those persons are entitled to exercise their rights pursuant to Article 56(1)(b) and (c) of Regulation No 207/2009. However, there is no indication that Article 56(1)(a) of the regulation which, unlike Article 5, refers only to 'any natural or legal person', should be interpreted as excluding authorities established under public law. The grounds for revocation and invalidity, in particular the absolute grounds for invalidity within the meaning of Article 52 of Regulation No 207/2009, may be invoked by any person, regardless of private or public capacity, which is why the only requirement at the end of Article 56(1)(a) is that the person 'has the capacity in its own name to sue and be sued'. Therefore, despite the applicant's assertions to the contrary, the lack of explicit reference in Article 56(1)(a) of Regulation No 207/2009 to authorities established under public law cannot be taken to mean that those authorities are excluded from the scope of that provision.

20 Consequently, the Grand Board of Appeal did not infringe Article 5 and Article 56 of Regulation No 207/2009 in finding that the intervener had capacity to bring an application for a declaration of invalidity of the contested mark.

21 The first plea in law must therefore be dismissed.

Second plea, alleging an infringement and misapplication of Article 7(1)(c), Article 12 and Article 52 of Regulation No 207/2009

22 The applicant alleges that, by finding that the contested mark constituted a geographical indication of origin of a place known to the relevant public that would provide information about the geographic source of the services in question, and not their commercial origin, the Grand Board of Appeal infringed Article 7(1)(c) as well as Article 12 and Article 52 of Regulation No 207/2009.

23 In particular, according to the applicant, Article 7(1)(c) of the said regulation prohibits the registration of a geographical indication of origin only where the sign indicates a place which currently is, or which may be in the future, associated with the category of goods or services in question, rather than the place where the services are provided, since the reference is to 'geographical origin'. In addition, unlike goods, services do not in general themselves possess the characteristics of the territory where they are supplied or in which the principal place of business of the undertaking supplying them is located. Therefore, the only elements that can characterise services is the way in which they are supplied or the status of the supplier, rather than their geographic origin, with the exception of services that are 'typical' of a certain region. Since the principal place of business of the undertaking supplying the services or the place of supply may vary, they cannot create an unbreakable connection between the service and the territory. Finally, the reasonable probability of an association being made between the service and a place must exist from the moment that a trade mark is registered, which the intervener has not shown to be the case.

24 In addition, according to the applicant, the Grand Board of Appeal failed to take into account the effect of Article 12(b) of Regulation No 207/2009, which allows a third party to include the term 'Suedtirol' in its name or business name, notwithstanding registration of the contested mark. Article 12(b) ensures that geographical indications of origin remain sufficiently available in the course of trade.

25 EUIPO and the intervener take the view that those arguments are unfounded.

26 As a preliminary point, it must be recalled that, under Article 7(1)(c) of Regulation No 207/2009, 'trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service' may not be registered.

27 In addition, Article 7(2) of that regulation states that '[Article 7(1)] shall apply notwithstanding that the grounds of non-registrability obtain in only part of the [European Union]'.

28 Article 52(1)(a) of Regulation No 207/2009 provides that '[an EU] trade mark shall be declared invalid on application to [EUIPO] or on the basis of a counterclaim in infringement proceedings … where the [EU] trade mark has been registered contrary to the provisions of Article 7…'.

29 According to the case-law, Article 7(1)(c) of Regulation No 207/2009 pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is sought may be freely used by all. That provision therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see judgment of 15 October 2003, *Nordmilch* v *OHIM (OLDENBURGER)*, T-295/01, EU:T:2003:267, paragraph 29 and the case-law cited).

30 As regards, more particularly, signs or indications which may serve to designate the geographical origin of the categories of goods in relation to which registration of the mark is applied for, especially geographical names, it is in the public interest that they remain available, not least because they may be an indication of the quality and other characteristics of the categories of goods concerned, and may also, in various ways, influence consumer tastes by, for instance, associating the goods with a place that

may give rise to a favourable response (see, to that effect, judgments of 4 May 1999, *Windsurfing Chiemsee*, C-108/97 and C-109/97, EU:C:1999:230, paragraph 26, and of 13 September 2013, *Fürstlich Castell'sches Domänenamt* v *OHIM — Castel Frères (CASTEL)*, T-320/10, not published, EU:T:2013:424, paragraph 43).

31 Despite the applicant's assertions to the contrary, that case-law is equally applicable to services (see, to that effect, judgment of 7 June 2005, *Münchener Rückversicherungs-Gesellschaft* v *OHIM (MunichFinancialServices)*, T-316/03, EU:T:2005:201, paragraph 32).

32 Furthermore, it may be observed, first, that the registration of geographical names as trade marks where they designate specified geographical locations which are already famous, or are known for the category of goods or services concerned, and which are therefore associated with that category in the mind of the relevant class of persons, is excluded as, secondly, is the registration of geographical names which are liable to be used by undertakings and must remain available to such undertakings as indications of the geographical origin of the category of goods or services concerned (see, to that effect, judgments of 15 October 2003, *OLDENBURGER*, T-295/01, EU:T:2003:267, paragraph 31 and the case-law cited, and of 15 January 2015, *MEM* v *OHIM (MONACO)*, T-197/13, EU:T:2015:16, paragraph 48).

33 In that connection, it must be observed that the EU legislature, in derogation from Article 7(1)(c) of Regulation 2007/2009, has preserved the possibility of registering signs which may serve to designate geographical origin as collective marks pursuant to Article 66(2) of that regulation and, for certain goods, where they meet the necessary conditions, as geographical indications or designations of origin which are protected under the provisions of 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) (judgment of 15 October 2003, *OLDENBURGER*, T-295/01, EU:T:2003:267, paragraph 32 and the case-law cited).

34 However, it must be noted that, in principle, Article 7(1)(c) of Regulation No 207/2009 does not preclude the registration of geographical names which are unknown to the relevant class of persons — or at least unknown as the designation of a geographical location — or of names in respect of which, because of the type of place they designate, such persons are unlikely to believe that the category of goods or services concerned originates there (see, to that effect, judgments of 15 October 2003, *OLDENBURGER*, T-295/01, EU:T:2003:267, paragraph 33 and the case-law cited, and of 15 January 2015, *MONACO*, T-197/13, EU:T:2015:16, paragraph 49).

35 A sign's distinctiveness cannot be assessed other than by reference to the goods and services concerned, on the one hand, and by reference to the understanding which the relevant persons have of it, on the other (judgment of 15 October 2003, *OLDENBURGER*, T-295/01, EU:T:2003:267, paragraph 34).

36 In the first place, in relation to the relevant public, it is appropriate to confirm the definition used by the Grand Board of Appeal in paragraphs 36 to 42 of the contested decision. First, the contested mark is the word sign SUEDTIROL, which can be understood by the Italian public and also by the German-speaking population in the European Union. The term 'Suedtirol' and the German term ' Südtirol', used to identify the South Tyrol region, are equivalent, the former including a diphthong which is commonly used to substitute the German letter 'ü'. Secondly, certain of the services designated by the contested mark, namely those of business management, business administration and office functions, scientific, technological and industrial analysis and research services, the design and development of computer hardware and software are aimed at undertakings across all economic sectors, which amount to a specialist public. In that connection, it must be noted that, even though the services might be considered to be equally aimed at individual entrepreneurs, those too can be regarded as professionals and therefore as forming part of a specialist public. With regard to legal

services and also to packaging and storage of goods, these are aimed at both the specialist and the average consumer. The majority of the relevant public is therefore made up of a particularly attentive public.

37 In this connection, the Court has already held that, for a sign to fall within the scope of the prohibition in Article 7(1)(b) or (c) of Regulation No 207/2009, it was sufficient that a ground of refusal existed in relation to some of the target public and that it was unnecessary to examine whether other consumers belonging to the relevant public were also aware of that sign (see judgment of 25 November 2015, *bd breyton-design* v *OHIM (RACE GTP)*, T-520/14, not published, EU:T:2015:884, paragraph 29 and the case-law cited).

38 The Grand Board of Appeal was therefore correct to find that the relevant public to be taken into account was made up of the German-speaking public in Italy and the Union, with a high attention level.

39 In the second place, in the light of the considerations set out in paragraphs 26 to 35 above, in order to assess the descriptive character of the contested mark for the purposes of Article 7(1)(c) of Regulation No 207/2009, it is necessary to determine, first, whether the geographical term constituting the mark applied for is understood as such and known by the relevant public and, secondly, whether that geographical term is currently associated, in the minds of the relevant public, with the services applied for or whether such an association could reasonably be established in future.

40 First, as the Grand Board of Appeal rightly observed in paragraphs 15 to 19 and 43 to 44 of the contested decision, the term 'SUEDTIROL', equivalent to the German word 'Südtirol', is perceived by the relevant public as a geographical indication referring to the South Tyrol region, a region known long before registration was sought for the contested mark, on account of its history, geographical location, its autonomy, its specific language regime, and its economic significance. The Court agrees with the Grand Board of Appeal that these matters constitute well-known facts, that is, facts likely to be known by anyone or which may be learnt from generally accessible sources (judgment of 22 June 2004, *Ruiz-Picasso and Others* v *OHIM — DaimlerChrysler (PICARO)*, T-185/02, EU:T:2004:189, paragraph 29), which existed well before the said application for registration was made.

41 Secondly, in relation to the requirement for an association between the geographical name and the services described, it must be held that the Grand Board of Appeal was also correct in noting, in paragraph 19 of the contested decision that, in essence, South Tyrol has for a long time been generally perceived as a prosperous region with a dynamic economy, as stated in paragraph 40 above. The Court finds that the economic prosperity and dynamic economy of the South Tyrol region is also a well-known fact. In addition, it is clear that the Grand Board of Appeal was correct to find, in paragraph 50 of the contested decision, that services such as those designated by the contested mark are in principle offered in every region of a certain level of economic importance. In the context of the present action, this assessment is unaffected by the applicant's general criticisms, which remain unsubstantiated.

42 In addition, it is true that the relevant public might take the contested mark as a reference to a specific quality of the services in question, for example, to the fact that the services are tailored to the particular requirements of businesses operating in that region, characterised by a particular political, administrative and linguistic context (paragraph 51 of the contested decision). Thus, the use of a geographical indication of origin is likely to convey to those concerned a positive idea or image of a particular quality of those services, within the meaning of the case-law (see, to that effect, judgment of 15 December 2011, *Mövenpick* v *OHIM (PASSIONATELY SWISS)*, T-377/09, not published, EU:T:2011:753, paragraphs 44 and 45) and is likely to give rise to a favourable response within the meaning of the case-law cited in paragraph 30 above when used in conjunction with the marketing of the services covered by the contested mark.

43 It follows that the contested mark will be understood by the relevant public not only as a reference to a geographical region, which gives rise to a favourable response, but also, in view of the prosperity and dynamic economic development of the region, as an indication that the services designated by the mark originate from that region. In addition, it must be stated that the intervener established before the Grand Board of Appeal that various undertakings, established in that region, actually offer services of the same type as the services designated by the contested mark (paragraph 55 of the contested decision) and that the applicant has done nothing to call that assessment into question. Consequently, when those services are marketed under the contested mark, the relevant public will perceive the mark to be an indication of their origin.

44 What is more, to the extent that the applicant essentially maintains that the geographical name is not capable of describing the characteristics of the services in question, it is sufficient to recall that the purpose of Article 7(1)(c) of Regulation No 207/2009 is to prevent an economic player from monopolising a geographical indication of origin to the detriment of its competitors. Even though, in principle, the Grand Board of Appeal cannot refuse registration under Article 7(1)(c) of Regulation No 207/2009 until it has examined the relevance of the geographical indication of origin for such competitive relationships, by considering the association between that origin and the goods and services for which the mark is sought, the depth of that examination may nevertheless vary according to several factors, such as the extent, the reputation or the nature of the geographical indication of origin in question. The likelihood of a geographical indication of origin influencing competitive relationships is strong in the case of a large region with a reputation for the quality of a wide range of goods or services, and is weak in the case of a well-defined place the reputation of which is limited to a restricted number of goods or services (see, to that effect, judgment of 15 December 2011, *PASSIONATELY SWISS*, T-377/09, not published, EU:T:2011:753, paragraph 41).

45 In the present case, it is not disputed that such a likelihood should be considered a strong one, in view of the favourable response which the reference to South Tyrol may evoke when the services in question are marketed. The obligation on EUIPO to examine the association between the origin and the services designated by the contested mark must, therefore, be considered as less in-depth.

46 In that regard, it should be stressed that it is clear from the case-law that, in circumstances such as those in the present case, where the geographical indication of origin is already known or reputed, EUIPO may merely confirm the existence of such an association, rather than carrying out an actual examination of the existence of the association (see, to that effect, judgment of 15 December 2011, *PASSIONATELY SWISS*, T-377/09, not published, EU:T:2011:753, paragraph 43).

47 In any event, it must be noted that the Grand Board of Appeal, in paragraphs 51 to 56 of the contested decision, carried out an actual examination of the association likely to exist between the geographical indication of origin and each of the categories of services designated by the contested mark, and that this examination was free from error.

48 In addition, as the Grand Board of Appeal rightly stated in paragraph 49 of the contested decision, the services covered by the contested mark do not possess any particular quality that could lead the relevant public to disassociate the geographical indication from the geographical origin of those services. Therefore, it must be held, in accordance with the case-law set out in paragraph 34 above, that Article 7(1)(c) of Regulation No 207/2009 does not allow registration of the geographical indication in question, which is known to those concerned as the designation of a geographical region to the extent that it is likely that those concerned may imagine that the services in question originate from that region (see paragraph 57 of the contested decision).

49 In the light of all of the foregoing, it must be held that the contested mark was registered in breach of Article 7(1)(c) of Regulation No 207/2009.

50 That conclusion is not affected by the various arguments put forward by the applicant.

51 In the first place, the applicant disputes the relevance of taking account of the place where the services are provided or the principal place of business as a criterion of origin. In this connection, it is sufficient to observe that, for the categories of services designated by the contested mark, the place name is normally used and understood as a reference to the principal place of business of the undertaking supplying the services in question and, therefore, to the place from which they are generally supplied. Other possible meanings for that geographical indication are without relevance since, according to the case-law, it is sufficient if at least one of its possible meanings designates a characteristic of the goods or services concerned (see, by analogy, judgment of 7 June 2005, *MunichFinancialServices*, T-316/03, EU:T:2005:201, paragraph 33).

52 Secondly, the applicant submits that Article 12(b) of Regulation No 207/2009 is sufficient to preserve the availability of, inter alia, geographical indications of origin in the course of trade, since it prevents the proprietor of a mark from prohibiting a third party from using those indications in their name or business name or for commercial information purposes.

53 Article 12(b) of Regulation No 207/2009 provides that '[an EU] trade mark shall not entitle the proprietor to prohibit a third party from using in the course of trade … indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service, or other characteristics of the goods or service'.

54 It is true that the purpose of Article 12(b), in the context of its relationship with Article 7(1)(c) of Regulation No 207/2009, in particular for trade marks which do not fall within the scope of that provision because they are not exclusively descriptive, is to ensure, inter alia, that use of an indication relating to geographical origin, which also forms part of a complex trade mark, does not fall within a prohibition that the proprietor of such a mark is entitled to enforce under Article 9 of the regulation, where that indication is used in accordance with honest practices in industrial and commercial matters (see judgment of 15 October 2003, *OLDENBURGER*, T-295/01, EU:T:2003:267, paragraph 55 and the case-law cited).

55 However, it should be remembered that, in circumstances similar to those in the present case, the Court of Justice has expressly held that the legal principle, referred to in paragraph 30 above, concerning the public interest underlying Article 7(1)(c) of Regulation No 207/2009, also demonstrated by the possibility, appearing in Article 66(2) of the said regulation, that, by way of derogation from the said Article 7(1)(c), signs or indications capable of serving to designate the geographical provenance of products may constitute collective marks, is not contradicted by Article 12(b) of the regulation, which does not have a decisive bearing on the interpretation of the first provision. Indeed, Article 12(b) of Regulation No 207/2009, which aims, inter alia, to resolve the problems posed by registration of a mark consisting wholly or partly of a geographical name, does not confer on third parties the right to use the name as a trade mark but merely guarantees their right to use it descriptively, that is to say, as an indication of geographical origin, provided that it is used in accordance with honest practices in industrial and commercial matters (see, to that effect and by analogy, judgment of 4 May 1999, *Windsurfing Chiemsee*, C-108/97 and C-109/97, EU:C:1999:230, paragraphs 26 to 28).

56 From this it must be concluded that the interest in retaining the availability of indications of geographical origin is not, despite the applicant's assertions to the contrary, sufficiently protected by the content of Article 12(b) of Regulation No 207/2009. The applicant's argument must therefore be dismissed.

57 In the light of all the foregoing, the second plea must be dismissed.

58 The action must therefore be dismissed in its entirety.

Costs

59 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.

60 Since the applicant has been unsuccessful, it must be ordered to pay the costs in accordance with the form of order sought by EUIPO and the intervener.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby:

1. Dismisses the action;

2. Orders Internet Consulting GmbH to pay the costs.

Prek Labucka Kreuschitz

Delivered in open court in Luxembourg on 20 July 2016.

[Signatures]