Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

19 June 2012*

(Trade marks — Approximation of laws of the Member States — Directive 2008/95/EC — Identification of the goods or services for which the protection of a trade mark is sought — Requirements of clarity and precision — Use of class headings of the Nice Classification for the purposes of the registration of trade marks — Whether permissible — Extent of protection of the trade mark)

In Case C-307/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from The Person Appointed by the Lord Chancellor under Section 76 of The Trade Marks Act 1994, on appeal from the Registrar of Trade Marks (United Kingdom), by decision of 27 May 2010, submitted by the High Court of Justice (Queen's Bench Division) and received at the Court of Justice on 28 June 2010, in the proceedings

Chartered Institute of Patent Attorneys

v

Registrar of Trade Marks,

THE COURT (Grand Chamber),

composed of V. Skouris, President, A. Tizzano, J.N. Cunha Rodrigues, K. Lenaerts, J.-C. Bonichot, J. Malenovský and U. Lõhmus (Rapporteur), Presidents of Chambers, M. Ilešič, E. Levits, A. Ó Caoimh, T. von Danwitz, A. Arabadjiev and C. Toader, Judges,

Advocate General: Y. Bot,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 11 October 2011,

after considering the observations submitted on behalf of:

— the Chartered Institute of Patent Attorneys, by M. Edenborough QC,

— the United Kingdom Government, by S. Hathaway, acting as Agent, assisted by S. Malynicz, barrister,

— the Czech Government, by M. Smolek and V. Štencel, acting as Agents,

— the Danish Government, by C. Vang, acting as Agent,

* Language of the case: English.

— the German Government, by T. Henze and J. Kemper, acting as Agents,

— Ireland, by N. Travers, BL,

— the French Government, by B. Cabouat, G. de Bergues and S. Menez, acting as Agents,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Polish Government, by M. Szpunar, acting as Agent,

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the Slovak Government, by B. Ricziová, acting as Agent,

— the Finnish Government, by J. Heliskoski, acting as Agent,

— the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), by D. Botis and R. Pethke, acting as Agents,

— European Commission, by F.W. Bulst and J. Samnadda, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

2 The reference has been made in the course of proceedings between The Chartered Institute of Patent Attorneys ('CIPA') and the Registrar of Trade Marks ('the Registrar') concerning the latter's refusal to register as a national trade mark the word sign 'IP TRANSLATOR'.

Legal context

International law

3 Trade-mark law is governed at international level by the Convention for the Protection of Industrial Property signed in Paris on 20 March 1883, as last revised at Stockholm on 14 July 1967 and amended on 28 September 1979 (United Nations Treaties Series, No 11851, vol. 828, p. 305, 'the Paris Convention'). All the Member States are signatories to the Convention.

4 Under Article 19 of the Paris Convention, the States to which it applies reserve the right to make separately between themselves special agreements for the protection of industrial property.

5 That provision served as a basis for the adoption of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, concluded at the Nice Diplomatic Conference on 15 June 1957, last revised in Geneva on 13 May 1977 and amended on 28 September 1979 (United Nations Treaty Series, Vol. 1154, No I 18200, p. 89; 'the Nice Agreement'). Article 1 of that agreement provides:

'(1) The countries to which this Agreement applies constitute a Special Union and adopt a common classification of goods and services for the purposes of the registration of marks (hereinafter designated as "the [Nice] Classification").

(2) The Classification consists of:

(i) a list of classes, together with, as the case may be, explanatory notes;

(ii) an alphabetical list of goods and services (hereinafter designated as "the alphabetical list") with an indication of the class into which each of the goods or services falls.

…'

6 Article 2 of the Nice Agreement, entitled 'Legal Effect and Use of the Classification', is worded as follows:

'(1) Subject to the requirements prescribed by this Agreement, the effect of the Classification shall be that attributed to it by each country of the Special Union. In particular, the Classification shall not bind the countries of the Special Union in respect of either the evaluation of the extent of the protection afforded to any given mark or the recognition of service marks.

(2) Each of the countries of the Special Union reserves the right to use the Classification either as a principal or as a subsidiary system.

(3) The competent Office of the countries of the Special Union shall include in the official documents and publications relating to registrations of marks the numbers of the classes of the Classification to which the goods or services for which the mark is registered belong.

(4) The fact that a term is included in the alphabetical list in no way affects any rights which might subsist in such a term.'

7 The Nice Classification is maintained by the World Intellectual Property Organisation (WIPO). Since 1 January 2002, the list of classes of that classification has contained 34 classes of products and 11 classes of services. Each class is designated by one or more general indications, commonly called 'class headings', which indicate in a general manner the fields to which the goods and services in principle belong. The alphabetical list of goods and services contains approximately 12 000 entries.

8 According to the Guidance for the User of the Nice Classification, in order to ascertain the correct classification of each individual product or service, the alphabetical list of goods and services and the explanatory notes, relating to the various classes, should be consulted. If a product or service cannot be classified with the aid of the list of classes, the explanatory notes or the alphabetical list of goods and services, the general remarks set forth the criteria that should be applied.

9 According to the WIPO database, of the Member States of the European Union, only the Republic of Malta and the Republic of Cyprus are not party to the Nice Agreement, but nevertheless use the Nice Classification.

10 The Nice Classification is revised every five years by a committee of experts. The ninth edition, which was applicable at the time of the facts in the main proceedings, was replaced, as of 1 January 2012, by the 10th edition.

European Union law

Directive 2008/95

11 Directive 2008/95 replaced First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

12 According to recitals 6, 8, 11 and 13 in the preamble to Directive 2008/95

'(6) Member States should … remain free to fix the provisions of procedure concerning the registration, the revocation and the invalidity of trade marks acquired by registration.

…

(8) Attainment of the objectives at which this approximation of laws is aiming requires that the conditions for obtaining and continuing to hold a registered trade mark be, in general, identical in all Member States.

…

(11) The protection afforded by the registered trade mark, the function of which is in particular to guarantee the trade mark as an indication of origin, should be absolute in the case of identity between the mark and the sign and the goods or services.

…

(13) All Member States are bound by the Paris Convention …. It is necessary that the provisions of this Directive should be entirely consistent with those of the said Convention. The obligations of the Member States resulting from that Convention should not be affected by this Directive. …'

13 Article 3(1) and (3) of Directive 2008/95 provides:

'1. The following shall not be registered or, if registered, shall be liable to be declared invalid:

…

(b) trade marks which are devoid of any distinctive character;

(c) 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 services;

…

3. A trade mark shall not be refused registration or be declared invalid in accordance with paragraph 1(b), (c) or (d) if, before the date of application for registration and following the use which has been made of it, it has acquired a distinctive character. Any Member State may in addition provide that this provision shall also apply where the distinctive character was acquired after the date of application for registration or after the date of registration.'

14 Article 4(1)(a) of that directive provides:

'A trade mark shall not be registered or, if registered, shall be liable to be declared invalid:

(a) if it is identical with an earlier trade mark, and the goods or services for which the trade mark is applied for or is registered are identical with the goods or services for which the earlier trade mark is protected.'

Communication No 4/03

15 Communication No 4/03 of the President of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 June 2003 concerning the use of class headings in lists of goods and services for Community trade mark applications and registrations (OJ OHIM 2003, p. 1647) is intended, according to point I thereof, to explain and clarify the practice of OHIM 'regarding the use of class headings and the consequences of such use when Community trade mark applications or registrations are restricted or partially surrendered or are involved in opposition or cancellation proceedings'.

16 According to the second paragraph of Point III of that Communication:

'It constitutes a proper specification of goods and services in a [Community Trade Mark] application if the general indications or the whole class headings provided for in the Nice Classification are used. The use of these indications allows a proper classification and grouping. [OHIM] does not object to the use of any of the general indications and class headings as being too vague or indefinite, contrary to the practice which is applied by some national offices in the European Union and in third countries in respect of some of the class headings and general indications.'

17 The first paragraph of Point IV of Communication No 4/03 provides:

'The 34 classes for goods and the 11 classes for services comprise the totality of all goods and services. As a consequence of this, the use of all the general indications listed in the class heading of a particular class constitutes a claim to all the goods or services falling within this particular class.'

National law

18 Directive 89/104 was transposed into the national law of the United Kingdom by the Trade Marks Act 1994 ('the 1994 Act').

19 Under Section 32(2)(c) of that Act, the application for registration must contain inter alia 'a statement of the goods and services for which it is sought to register the trade mark'.

20 Under section 34 of the Act:

'1. Goods and services shall be classified for the purposes of the registration of trade marks according to a prescribed system of classification.

2. Any questions arising as to the class within which any goods or services fall shall be determined by the registrar, whose decision shall be final.'

21 The 1994 Act is supplemented by the Trade Marks Rules 2008 ('the 2008 Rules') which deal with practice and procedure before the UK Intellectual Property Office (UKIPO). Under Rule 8(2)(b) of those rules, the applicant must specify the goods or services for which the national trade mark is sought in such a way as to indicate clearly the nature of those goods or services.

The dispute in the main proceedings and the questions referred for a preliminary ruling

22 On 16 October 2009, CIPA applied under Section 32 of the 1994 Act to register the designation 'IP TRANSLATOR' as a trade mark. To identify the services covered by that registration CIPA used the general terms of the heading of Class 41 of the Nice Classification, that is to say, 'Education; providing of training; entertainment; sporting and cultural activities'.

23 The Registrar refused that application, by decision of 12 February 2010, on the basis of the national provisions corresponding to Article 3(1)(b) and (c) of Directive 2008/95. The Registrar interpreted the application in accordance with Communication No 4/03 and concluded that it covered not only services of the kind specified by CIPA, but also every other service falling within Class 41 of the Nice Classification, including translation services. For these latter services the designation IP TRANSLATOR lacked distinctive character and was descriptive in nature. Moreover, there was no evidence that the word sign IP TRANSLATOR had acquired a distinctive character through use in relation to translation services prior to the date of the application for registration. There was also no request by CIPA for such services to be excluded from its trade mark application.

24 On 25 February 2010, CIPA appealed to the Appointed Person ('the referring court'), contending that its application for registration did not specify, and therefore did not cover, translation services in Class 41. For that reason, it submitted, the Registrar's objections to registration were misconceived and CIPA's application for registration had been wrongly refused.

25 According to the referring court, it is clear that translation services are not normally regarded as a subcategory of services relating to 'education', 'providing of training' 'entertainment' 'sporting activities' or 'cultural activities'.

26 Moreover, according to the order for reference, in addition to the alphabetical list which contains 167 listings for the itemisation of services falling within Class 41 of the Nice Classification, the database maintained by the Registrar for the purposes of the 1994 Act contains more than 2 000 listings for the itemisation of services falling within Class 41 and the Euroace database maintained by OHIM for the purposes of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) contains more than 3 000 listings.

27 The referring court points out that, if the Registrar's approach were correct, all such itemisations, which include translation services, would be covered by CIPA's application for registration. In that case, the coverage of the application would extend to goods and services not mentioned in the application or in any resulting registration. It takes the view that that interpretation is incompatible with the requirement for the various goods and services covered by a trade mark application to be identified with clarity and precision.

28 The referring court also refers to a survey conducted in 2008 by the Association of European Trade Mark Owners (Marques), which indicated that practice varies among the Member States, with some competent authorities applying the approach to interpretation envisaged by Communication No 4/03 and others following a different approach.

29 In those circumstances the Person Appointed by the Lord Chancellor under Section 76 of the Trade Marks Act 1994, on Appeal from the Registrar of Trade Marks, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'In the context of [Directive 2008/95] ...:

1. Is it necessary for the various goods or services covered by a trade mark application to be identified with any, and if so what particular, degree of clarity and precision?

2. Is it permissible to use the general words of the class headings of the [Nice Classification] for the purpose of identifying the various goods or services covered by a trade mark application?

3. Is it necessary or permissible for such use of the general words of the Class Headings of [the Nice Classification] to be interpreted in accordance with Communication No 4/03 ...?'

Admissibility of the reference for a preliminary ruling

30 In its written observations, OHIM argues that the reference for a preliminary ruling must be declared inadmissible on the ground that it is artificial, with the result that the answer of the Court to the questions referred has no relevance as regards the outcome of the dispute in the main proceedings. The European Commission also expresses doubt as to the real need for the registration at issue.

31 In that regard, it must be observed that, according to settled case-law, the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of Community law which they need in order to decide the disputes before them (see Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 22, and Case C-445/06 *Danske Slagterier* [2009] ECR I-2119, paragraph 65).

32 In the context of that cooperation, questions concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see Case C-421/01 *Traunfellner* [2003] ECR I-11941, paragraph 37; Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 25; and Joined Cases C-570/07 and C-571/07 *Blanco Pérez and Chao Gómez* [2010] ECR I-4629, paragraph 36).

33 However, that is not so in the present case. It is clear that the application for registration of the trade mark was actually lodged and that the Registrar rejected it, even if he departed from his usual practice. Moreover, the interpretation of European Union law sought by the national body does actually respond to an objective need inherent in the outcome of a case pending before it (see, to that effect, Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 38).

34 It follows that the reference for a preliminary ruling must be considered to be admissible.

The questions referred for a preliminary ruling

35 By its three questions, which should be considered together, the referring court essentially asks whether Directive 2008/95 must be interpreted as meaning thatit requires that the goods and services for which protection by a trade mark is sought should be identified with a certain degree of clarity and precision. If so, the referring court seeks to know whether, given those requirements of clarity and precision, Directive 2008/95 must be interpreted as meaning that it precludes an applicant for a national trade mark from identifying those goods and services by means of the general indications of the class headings of the Nice Classification and precludes the use of all the general indications of the heading of a particular class of the Nice Classification from being considered to be a claim with regard to all the goods and services in that particular class.

36 It should first be recalled that, as is stated in recital 11 in the preamble to Directive 2008/95, the function of the protection afforded by a trade mark is in particular to guarantee the mark to the consumer or end-user as an indication of origin of the product or services denoted by the trade mark, by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin (see, to that effect, Case C-39/97 *Canon* [1998] ECR I-5507, paragraph 28; Case C-273/00 *Sieckmann* [2002] ECR I-11737, paragraphs 34 and 35; and Case C-529/07 *Chocoladefabriken Lindt & Sprüngli* [2009] ECR I-4893, paragraph 45).

37 It follows that the registration of a sign as a trade mark must always be applied for in relation to certain goods or services. Although, the function of the graphic representability requirement is, in particular, to define the mark itself in order to determine the precise subject of the protection afforded by the registered mark (see *Sieckmann*, paragraph 48) the extent of that protection is determined by the nature and the number of goods and services identified in that application.

The requirements of clarity and precision for identifying goods and services

38 As a preliminary point it must be observed that there is no provision of Directive 2008/95 which directly governs the question of the identification of the goods and services concerned.

39 However, that observation is not sufficient to support a finding that the determination of goods and services for the purposes of registration of a national trade mark is a matter which does not fall within the scope of Directive 2008/95.

40 Although it is apparent from recital 6 of the preamble to Directive 2008/95 that the Member States remain free to fix the provisions of procedure concerning, inter alia, the registration of trade marks (see, to that effect, Case C-418/02 *Praktiker Bau- und Heimwerkermärkte* [2005] ECR I-5873, paragraph 30, and Case C-246/05 *Häupl* [2007] ECR I-4673, paragraph 26), the fact remains that the Court has held that determination of the nature and content of the goods and services eligible for protection by a registered trade mark is subject, not to the provisions on registration procedures, but to the substantive conditions for acquiring the right conferred by the trade mark (*Praktiker Bau- und Heimwerkermärkte*, paragraph 31).

41 In that regard, recital 8 of the preamble to Directive 2008/95 emphasises that attainment of the objectives at which the approximation of the laws of the Member States is aiming requires that the conditions for obtaining and continuing to hold a registered trade mark be, in general, identical in all Member States (see, to that effect, *Sieckmann*, paragraph 36; Case C-363/99 *Koninklijke KPN Nederland* [2004] ECR I-1619, paragraph 122; and Case C-482/09 *Budějovický Budvar* [2011] ECR I-8701, paragraph 31).

42 As regards the requirement of clarity and precision for the identification of the goods and services covered by an application to register a sign as a trade mark, it must be held that the application of certain provisions of Directive 2008/95 depends to a great extent on whether the goods or services covered by a registered trade mark are indicated with sufficient clarity and precision.

43 In particular, the question of whether or not any of the grounds for refusal or invalidity set out in Article 3 of the Directive apply to the mark must be assessed specifically by reference to the goods or services in respect of which registration is sought (see *Koninklijke KPN Nederland*, paragraph 33, and Case C-239/05 *BVBA Management, Training en Consultancy* [2007] ECR I-1455, paragraph 31).

44 Similarly, further grounds for refusal or invalidity concerning conflicts with earlier rights provided for by Article 4(1) of the directive presuppose the identity or similarity of the goods or services designated by the two conflicting marks.

45 Moreover, the Court has held that, although it is not necessary to specify in detail the service(s) for which registration is sought, since, to identify those services, it is sufficient to use general wording, the applicant must conversely be required to specify the goods or types of goods to which those services relate by means, for example, of other more specific details. Such details will make it easier to apply the articles of Directive 2008/95 referred to in the previous paragraphs, without appreciably limiting the protection afforded to the trade mark (see, by analogy, *Praktiker Bau- und Heimwerkermärkte*, paragraphs 49 to 51).

46 In that connection, it must be recalled that the entry of the mark in a public register has the aim of making it accessible to the competent authorities and to the public, particularly to economic operators (*Sieckmann*, paragraph 49, and Case C-49/02 *Heidelberger Bauchemie* [2004] ECR I-6129, paragraph 28).

47 On the one hand, the competent authorities must know with clarity and precision the nature of the signs of which a mark consists in order to be able to fulfil their obligations in relation to the prior examination of applications for registration and the publication and maintenance of an appropriate and precise register of trade marks (see, by analogy, *Sieckmann*, paragraph 50, and *Heidelberger Bauchemie*, paragraph 29).

48 On the other hand, economic operators must be able to acquaint themselves, with clarity and precision, with registrations or applications for registration made by their actual or potential competitors, and thus to obtain relevant information about the rights of third parties (*Sieckmann*, paragraph 51, and *Heidelberger Bauchemie*, paragraph 30).

49 Accordingly, Directive 2008/95 requires the goods and services for which the protection of the trade mark is sought to be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that basis alone, to determine the extent of the protection sought.

Use of the general indications of the class headings of the Nice Classification

50 Directive 2008/95 contains no reference to the Nice Classification and, consequently, imposes no obligation or prohibition on Member States with regard to its use for the purposes of registration of national trade marks.

51 However, the obligation to use that instrument stems from Article 2(3) of the Nice Agreement which provides that the competent Office of the countries of the Special Union, which encompasses almost all the Member States, is to include in the official documents and publications relating to registrations of marks the numbers of the classes of the Nice Classification to which the goods or services for which the mark is registered belong.

52 Since the Nice Agreement was adopted pursuant to Article 19 of the Paris Convention and Directive 2008/95, according to recital 13, was not intended to affect the obligations of the Member States resulting from that Convention, it must be held that that directive does not preclude the competent national authorities from requiring or agreeing that an applicant for a national trade mark should identify the goods and services for which he is seeking the protection conferred by the trade mark by using the Nice Classification.

53 However, in order to guarantee the effectiveness of Directive 2008/95 and the smooth functioning of the system for the registration of trade marks, such identification must meet the requirements of clarity and precision which, as held in paragraph 49 of the present judgment , are laid down by the directive,.

54 In that connection, it must be observed that some of the general indications in the class headings of the Nice Classification are, in themselves, sufficiently clear and precise to allow the competent authorities to determine the scope of the protection conferred by the trade mark, while others are not such as to meet that requirement where they are too general and cover goods or services which are too variable to be compatible with the trade mark's function as an indication of origin.

55 It is therefore for the competent authorities to make an assessment on a case-by-case basis, according to the goods or services for which the applicant seeks the protection conferred by a trade mark, in order to determine whether those indications meet the requirements of clarity and precision.

56 Accordingly, Directive 2008/95 does not preclude the use of the general indications of the class headings of the Nice Classification to identify the goods and services for which the protection of the trade mark is sought, provided that such identification is sufficiently clear and precise to allow the competent authorities and economic operators to determine the scope of the protection sought.

The extent of the protection resulting from the use of all the general indications of a particular class heading

57 It must be recalled that the Court has held that it is possible to apply for registration of a mark either in respect of all the goods or services falling within a class, or in respect of only some of those goods or services (see, to that effect, *Koninklijke KPN Nederland*, paragraph 112).

58 According to the order for reference and to the observations submitted to the Court there are currently two approaches to the use of the general indications of the class headings of the Nice Classification, namely the approach corresponding to that derived from Communication No 4/03, according to which the use of all the general indications listed in the class heading of a particular class constitutes a claim to all the goods or services falling within that particular class, and the literal approach, which seeks to give the terms used in those indications their natural and usual meaning.

59 In that regard, most of the parties present at the hearing pointed out, in reply to a question put by the Court, that the existence, in parallel, of those two approaches was liable to affect the smooth functioning of the system for the registration of trade marks in the Union. In particular, it was emphasised that the two approaches may lead to a difference in the extent of the protection of a national trade mark if it is registered in several Member States, but also of the protection of the same mark if it is also registered as a Community trade mark. Such a difference might affect, inter alia, the outcome of an action for infringement, as such an action may have greater success in the Member States which follow the approach of Communication No 4/03.

60 Moreover, a situation in which the extent of the protection conferred by the trade mark depends on the approach to interpretation adopted by the competent authority and not on the actual intention of the applicant runs the risk of undermining legal certainty both for the applicant and for third party economic operators.

61 Accordingly, in order to respect the requirements of clarity and precision mentioned above, an applicant for a national trade mark who uses all the general indications of a particular class heading of the Nice Classification to identify the goods or services for which the protection of the trade mark is sought must specify whether its application for registration is intended to cover all the goods or services included in the alphabetical list of the particular class concerned or only some of those goods or services. If the application concerns only some of those goods or services, the applicant is required to specify which of the goods or services in that class are intended to be covered.

62 An application for registration which does not make it possible to establish whether, by using a particular class heading of the Nice Classification, the applicant intends to cover all or only some of the goods in that class cannot be considered sufficiently clear and precise.

63 Thus, in the case in the main proceedings, it is for the referring court to determine whether, when it used all the general indications of the heading of Class 41 of the Nice Classification, CIPA specified in its application whether or not it covered all the services in that class and, in particular, whether or not its application was intended to cover translation services.

64 Therefore, the answer to the questions referred is that:

— Directive 2008/95 must be interpreted as meaning that it requires the goods and services for which the protection of the trade mark is sought to be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that basis alone, to determine the extent of the protection conferred by the trade mark;

— Directive 2008/95 must be interpreted as meaning that it does not preclude the use of the general indications of the class headings of the Nice Classification to identify the goods and services for which the protection of the trade mark is sought, provided that such identification is sufficiently clear and precise;

— an applicant for a national trade mark who uses all the general indications of a particular class heading of the Nice Classification to identify the goods or services for which the protection of the trade mark is sought must specify whether its application for registration is intended to cover all

the goods or services included in the alphabetical list of that class or only some of those goods or services. If the application concerns only some of those goods or services, the applicant is required to specify which of the goods or services in that class are intended to be covered.

Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that it requires the goods and services for which the protection of the trade mark is sought to be identified by the applicant with sufficient clarity and precision to enable the competent authorities and economic operators, on that basis alone, to determine the extent of the protection conferred by the trade mark.

Directive 2008/95 must be interpreted as meaning that it does not preclude the use of the general indications of the class headings of the Classification referred to in Article 1 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, concluded at the Nice Diplomatic Conference on 15 June 1957, last revised in Geneva on 13 May 1977 and amended on 28 September 1979, to identify the goods and services for which the protection of the trade mark is sought, provided that such identification is sufficiently clear and precise.

An applicant for a national trade mark who uses all the general indications of a particular class heading of the Classification referred to in Article 1 of the Nice Agreement to identify the goods or services for which the protection of the trade mark is sought must specify whether its application for registration is intended to cover all the goods or services included in the alphabetical list of that class or only some of those goods or services. If the application concerns only some of those goods or services, the applicant is required to specify which of the goods or services in that class are intended to be covered.

[Signatures]