Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

8 June 2017*

Reference for a preliminary rulingIntellectual propertyEU trade markRegulation (EC) No 207/2009 Articles 9 and 15Filing of the cotton flower sign by an associationRegistration as an individual trade markLicences to use the mark granted to cotton textile manufacturers affiliated with the association Application for a declaration of invalidity or revocationConcept of 'genuine use'Essential function of indicating origin

In Case C-689/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany), made by decision of 15 December 2015, received at the Court on 21 December 2015, in the proceedings

W.F. Gözze Frottierweberei GmbH,

Wolfgang Gözze

v

Verein Bremer Baumwollbörse,

THE COURT (Second Chamber),

composed of M. Ilešič (Rapporteur), President of the Chamber, A. Prechal, A. Rosas, C. Toader and E. Jarašiūnas, Judges,

Advocate General: M. Wathelet,

Registrar: X. Lopez Bancalari, Administrator,

having regard to the written procedure and further to the hearing on 19 October 2016,

after considering the observations submitted on behalf of:

— W.F. Gözze Frottierweberei GmbH and Mr Gözze, by M. Hermans and I. Heß, Rechtsanwältinnen,

— Verein Bremer Baumwollbörse, by C. Opatz, Rechtsanwalt,

— the German Government, by M. Hellmann, T. Henze and J. Techert, acting as Agents,

— the European Commission, by T. Scharf and J. Samnadda, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 1 December 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

2 The request was made in proceedings between W.F. Gözze Frottierweberei GmbH ('Gözze') and Mr Wolfgang Gözze and Verein Bremer Baumwollbörse ('the VBB') concerning, first, the use by Gözze of a sign similar to an EU trade mark of which the VBB is the proprietor and, secondly, the existence of genuine use of that mark.

Legal context

3 Regulation No 207/2009 was amended by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 (OJ 2015 L 341, p. 21), which entered into force on 23 March 2016. However, given the date of the facts in the main proceedings, this reference for a preliminary ruling must be examined in the light of Regulation No 207/2009 as it applied prior to that amendment.

4 Article 4 of that regulation provides:

'A[n EU] trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.'

5 Article 7(1) of that regulation provides:

'The following shall not be registered:

(a) signs which do not conform to the requirements of Article 4;

(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.

(d) trade marks consisting exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade;

…

(g) trade marks which are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or service;

…'

6 According to Article 9(1) of that regulation:

‘A[n EU] trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

(a) any sign which is identical with the [EU] trade mark in relation to goods or services which are identical with those for which the [EU] trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the [EU] trade mark and the identity or similarity of the goods or services covered by the [EU] trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;

…’

7 Article 15 of Regulation No 207/2009 provides:

‘1. If, within a period of five years following registration, the proprietor has not put the [EU] trade mark to genuine use in the [European Union] in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the [EU] trade mark shall be subject to the sanctions provided for in this Regulation, unless there are proper reasons for non-use.

…

2. Use of the [EU] trade mark with the consent of the proprietor shall be deemed to constitute use by the proprietor.’

8 Article 22(1) of that regulation provides:

‘[An EU] trade mark may be licensed for some or all of the goods or services for which it is registered and for the whole or part of the [European Union]. …’

9 According to Article 51(1) of that regulation:

‘The rights of the proprietor of the [EU] trade mark shall be declared to be revoked on application to the [European Union Intellectual Property Office (EUIPO)] or on the basis of a counterclaim in infringement proceedings:

(a) if, within a continuous period of five years, the trade mark has not been put to genuine use in the [European Union] in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use …;

(b) if, in consequence of acts or inactivity of the proprietor, the trade mark has become the common name in the trade for a product or service in respect of which it is registered;

(c) if, in consequence of the use made of it by the proprietor of the trade mark or with his consent in respect of the goods or services for which it is registered, the trade mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.’

10 Article 52(1) of that regulation states:

‘A[n EU] trade mark shall be declared invalid on application to [EUIPO] or on the basis of a counterclaim in infringement proceedings,

(a) where the [EU] trade mark has been registered contrary to the provisions of Article 7;

…’

11 Article 66 of Regulation No 207/2009 provides:

‘1. A [European Union] collective mark shall be a [European Union] trade mark which is described as such when the mark is applied for and is capable of distinguishing the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings. …

2. In derogation from Article 7(1)(c), signs or indications which may serve, in trade, to designate the geographical origin of the goods or services may constitute [European Union] collective marks within the meaning of paragraph 1. A collective mark shall not entitle the proprietor to prohibit a third party from using in the course of trade such signs or indications, provided he uses them in accordance with honest practices in industrial or commercial matters; in particular, such a mark may not be invoked against a third party who is entitled to use a geographical name.

3. The provisions of this Regulation shall apply to [European Union] collective marks, unless Articles 67 to 74 provide otherwise.’

12 Article 67 of that regulation provides:

‘1. An applicant for a [European Union] collective mark must submit regulations governing its use within the period prescribed.

2. The regulations governing use shall specify the persons authorised to use the mark, the conditions of membership of the association and, where they exist, the conditions of use of the mark, including sanctions. The regulations governing use of a mark referred to in Article 66(2) must authorise any person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark.

…’

13 Article 71 of that regulation provides:

‘1. The proprietor of a [European Union] collective mark shall submit to [EUIPO] any amended regulations governing use.

2. The amendment shall not be mentioned in the Register if the amended regulations do not satisfy the requirements of Article 67 or involve one of the grounds for refusal …

…’

14 Article 73 of that regulation provides:

‘Apart from the grounds for revocation provided for in Article 51, the rights of the proprietor of a[n EU] collective mark shall be revoked on application to [EUIPO] or on the basis of a counterclaim in infringement proceedings, if:

(a) the proprietor does not take reasonable steps to prevent the mark being used in a manner incompatible with the conditions of use, where these exist, laid down in the regulations governing use, amendments to which have, where appropriate, been mentioned in the Register;

…

(c) an amendment to the regulations governing use of the mark has been mentioned in the Register in breach of the provisions of Article 71(2), unless the proprietor of the mark, by further amending the regulations governing use, complies with the requirements of those provisions.'

15 The version of Regulation No 207/2009 resulting from Regulation No 2015/2424 includes a new section entitled 'EU certification marks', comprising Articles 74a to 74k of Regulation No 207/2009.

16 Article 74a provides:

'1. An EU certification mark shall be an EU trade mark which is described as such when the mark is applied for and is capable of distinguishing goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics, with the exception of geographical origin, from goods and services which are not so certified.

2. Any natural or legal person, including institutions, authorities and bodies governed by public law, may apply for EU certification marks provided that such person does not carry on a business involving the supply of goods or services of the kind certified.

…'

17 Pursuant to Article 4 of Regulation No 2015/2424, the provisions referred to in paragraphs 15 and 16 of the present judgment will apply as from 1 October 2017.

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

18 The VBB is an association exercising various activities linked to cotton. It is the proprietor of the following EU figurative trade mark, registered on 22 May 2008 for goods, in particular for textiles ('the cotton flower mark'):



19 It is apparent from the file submitted to the Court and the explanations provided at the hearing that, for several decades preceding that registration, that figurative sign ('the cotton flower sign') had been used by manufacturers of textiles made from cotton fibres to certify the composition and the quality of their goods.

20 Since the registration, the VBB has concluded licence agreements in respect of its cotton flower mark with undertakings affiliated to the association. Those undertakings agree to use the mark only for goods made from good-quality cotton fibres. Compliance with this commitment may be checked by the VBB.

21 Gözze, the director of which is Mr Gözze, which is not affiliated to the VBB and has not concluded a licence agreement with it, manufactures textiles made from cotton fibres and has affixed the cotton flower sign to them for several decades.

22 On 11 February 2014, the VBB brought infringement proceedings against Gözze and Mr Gözze before the competent EU trade mark court, the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) as a result of Gözze selling towels to which hangtags are attached, the back of which is reproduced below:



23 In the course of those proceedings, Gözze brought a counterclaim on 14 April 2014 for a declaration of invalidity of the cotton flower mark as from 22 May 2008 or, in the alternative, for revocation of the mark as from 23 May 2013.

24 It claims that the cotton flower sign is purely descriptive and thus not distinctive. The sign cannot be used as an indication of origin, has not been put, within the time period referred to in Article 15 of Regulation No 207/2009, to genuine use by the VBB or its licensees and should not, in any event, have been registered as a trade mark.

25 By judgment of 19 November 2014, the Landgericht Düsseldorf (Regional Court, Düsseldorf) upheld the VBB's action and dismissed Gözze's counterclaim.

26 It held that the sign at issue may serve as an indication of origin. Furthermore, having regard to the high degree of similarity between the cotton flower sign used on Gözze's labels and the VBB's cotton flower mark, there was a likelihood of confusion within the meaning of Article 9(1)(b) of Regulation No 207/2009.

27 Gözze brought an appeal against that decision before the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany).

28 The latter court shares the finding of the first judge that there is a high degree of similarity between the cotton flower sign affixed by Gözze to its goods and the VBB's cotton flower mark since it is distinguished only by the colour in which Gözze normally prints it.

29 However, it held that Gözze's use of the cotton flower sign for identical goods did not necessarily mean that the infringement proceedings brought by the VBB were well founded. That sign and the cotton flower mark would be perceived by the public first and foremost as a 'label of quality'. In those circumstances, the use of the sign and of the cotton flower mark could be viewed as not conveying any message as to the origin of the goods. This may lead to the conclusion, first, that the VBB should have its rights in the cotton flower mark revoked for lack of 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009 and, secondly, that Gözze did not commit any infringement.

30 Moreover, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) raised the question whether, in circumstances such as those in the main proceedings, the mark must be deemed to be of such a nature as to deceive the public, within the meaning of Article 7(1)(g) of the regulation. In the present case, the VBB controls only exceptionally the quality of the goods offered for sale by its licensees.

31 That court takes the view, finally, that it might be possible, in an appropriate case, to liken the use of an individual EU trade mark such as the cotton flower mark to the use of a collective EU trade mark. That would make it possible to consider, on the basis of the principles applicable to collective trade marks, that affixing such a mark on goods serves as an indication of origin, where the public associates it with the expectation of quality control carried out by the proprietor of the mark. If that reasoning were to be followed by the Court of Justice, it could, subsequently, be possible to apply, by analogy, Article 73(a) of Regulation No 207/2009, according to which the rights of the proprietor of such a mark must be declared to be revoked if he does not take reasonable steps to prevent use of the mark in a manner incompatible with the conditions of use as laid down in the regulations governing use.

32 In those circumstances, the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can the use of an individual mark as a label of quality constitute, in relation to the goods for which it is used, use as a trade mark for the purposes of Articles 9(1) and 15(1) of Regulation No 207/2009?

(2) If Question 1 is to be answered in the affirmative: is such a mark to be declared invalid, in accordance with Article 52(1)(a) in conjunction with Article 7(1)(g) of Regulation No 207/2009, or to be revoked, in accordance with a *mutatis mutandis* application of Article 73(c) of that regulation, if the proprietor of the mark fails to ensure that expectations in trade relating to the quality associated with the sign are being met by carrying out periodic quality controls at its licensees?’

Consideration of the questions referred

Question 1

33 By its first question, the referring court asks, in essence, whether Article 15(1) of Regulation No 207/2009 is to be interpreted as meaning that the affixing of an individual EU trade mark, by the proprietor or with his consent, on goods as a label of quality is a use as a trade mark that falls under the concept of ‘genuine use’ within the meaning of that provision, with the result that the proprietor of that mark is entitled to prevent, pursuant to Article 9(1)(b) of that regulation, the affixing by a third party of a similar sign on identical goods where there is a likelihood of confusion as referred to in the latter provision.

34 As regards Article 9(1)(b) of Regulation No 207/2009, it is absolutely clear from that provision that, in a case such as that in the main proceedings, in which it is undisputed that the third party, namely Gözze, is using in the course of trade, without the consent of the proprietor of the mark, a sign which is similar to that mark for identical goods, the proprietor is entitled to prevent that use if it creates a likelihood of confusion on the part of the public.

35 That is the case where the public is likely to believe that the goods or services designated by the sign used by the third party and those designated by the mark come from the same undertaking or, as the case may be, from economically linked undertakings (see, inter alia, judgments of 6 October 2005, *Medion*, C-120/04, EU:C:2005:594, paragraph 26; of 10 April 2008, *adidas and adidas Benelux*, C-102/07, EU:C:2008:217, paragraph 28; and of 25 March 2010, *BergSpechte*, C-278/08, EU:C:2010:163, paragraph 38).

36 In the light of the high degree of similarity between the cotton flower sign affixed to the cotton textiles offered for sale by Gözze and the cotton flower mark affixed to those offered for sale by the VBB's licensees, the referring court has already held in its order for reference that there is a likelihood of confusion between the sign and the mark. However, the referring court raises the question whether, on account of the absence of any 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009, the VBB may no longer rely on the mark. In that case, the referring court would consider upholding the counterclaim filed by Gözze seeking the revocation of the cotton flower mark.

37 As regards Article 15(1), it is settled case-law that there is 'genuine use' of a trade mark, within the meaning of that provision, where the mark is used in accordance with its essential function, which is to guarantee the identity of origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark (see, inter alia, judgments of 11 March 2003, *Ansul*, C-40/01, EU:C:2003:145, paragraph 43; of 13 September 2007, *Il Ponte Finanziaria* v *OHIM*, C-234/06 P, EU:C:2007:514, paragraph 72; and of 19 December 2012, *Leno Merken*, C-149/11, EU:C:2012:816, paragraph 29).

38 In the present case, it is common ground that the affixing, by the VBB's licensees, of the cotton flower mark on their goods is done in order to create or preserve an outlet for those goods.

39 However, the fact that a mark is used in order to create or preserve an outlet for the goods or services for which it is registered and not for the sole purpose of preserving the rights conferred by the mark is not sufficient to conclude that there is a 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009.

40 As the Court of Justice held in the case-law referred to in paragraph 37 of the present judgment, it is equally indispensable that the mark be used in accordance with its essential function.

41 As regards individual marks, the essential function is to guarantee the identity of origin of the marked goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin. For the trade mark to be able to fulfil its essential role in the system of undistorted competition which the Treaty seeks to establish and maintain, it must offer a guarantee that all the goods or services bearing it have been manufactured or supplied under the control of a single undertaking which is responsible for their quality (see, inter alia, judgments of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 28; of 12 November 2002, *Arsenal Football Club*, C-206/01, EU:C:2002:651, paragraph 48; and of 6 March 2014, *Backaldrin Österreich The Kornspitz Company*, C-409/12, EU:C:2014:130, paragraph 20).

42 The requirement, when applying Article 15(1) of Regulation No 207/2009, of use in accordance with the essential function of indicating origin reflects the fact that, while a mark may, admittedly, also be used to fulfil other functions, such as that of guaranteeing the quality of that product or service or that of communication, investment or advertising (see, inter alia, to that effect, judgments of 18 June 2009, *L'Oréal and Others*, C-487/07, EU:C:2009:378, paragraph 58, and of 22 September 2011, *Interflora and Interflora British Unit*, C-323/09, EU:C:2011:604, paragraph 38), it is nevertheless subject to the sanctions provided for in that regulation where it has not been used in accordance with its essential function for an uninterrupted period of five years. In that case, the rights of the proprietor

of the mark are declared to be revoked, in accordance with the rules laid down in Article 51(1)(a) of Regulation No 207/2009, unless he is able to invoke proper reasons for failing to make use of the mark in a way that enables it to fulfil its essential function.

43 The Court will now examine, in the light of the principles set out above, whether the use of an individual mark such as that in the main proceedings as a label of quality may be regarded as being made in accordance with the essential function of the mark.

44 In that regard, the essential function of the mark should not be confused with the other functions, referred to in paragraph 42 of the present judgment, that the mark may fulfil, such as that of guaranteeing quality.

45 Where the use of an individual mark, despite certifying the composition or quality of the goods or services, does not guarantee to consumers that the goods or services come from a single undertaking under the control of which they are manufactured or supplied and which, consequently, is responsible for the quality of those goods or services, such use is not made in accordance with the function of indicating origin.

46 It follows, as the Advocate General observed in points 47 and 56 of his opinion, that there is no use in accordance with the essential function of the individual mark where it is affixed on goods for the sole purpose of being a label of quality for those goods and not that of guaranteeing, in addition, that the goods come from a single undertaking under the control of which they are manufactured and which is responsible for their quality.

47 In the main proceedings, the VBB stated at the hearing before the Court of Justice that it is an association by State charter (*kraft staatlicher Verleihung*); it invests income from licensing its mark in promoting cotton; it publishes educational material on cotton and organises seminars on that subject; it also acts as an arbitration tribunal and exercises a public function by participating in setting the 'Bremen CIF price', which expresses a reference value for cotton on the market.

48 The purpose of the association, as presented by the VBB before the Court of Justice, suggests that the association is external to its licensees' production of goods and is not responsible for those goods either.

49 However, it is for the referring court to verify, on the basis of all the information submitted to it by the parties in the main proceedings, whether relevant and consistent evidence makes it possible to consider that the affixing of the VBB's cotton flower mark by the licensees of that association to their goods guarantees to consumers that the goods come from a single undertaking, namely the VBB comprising its affiliates, under the control of which the goods are manufactured and which is responsible for their quality.

50 In any event, the fact that the licence agreements enable the VBB to verify that the licensees use exclusively good-quality cotton fibres cannot constitute such evidence. It implies, at most, that the VBB certifies the quality of the raw material used. As is apparent from Article 66 of Regulation No 207/2009 and Article 74a, added to that regulation by Regulation No 2015/2424, such a certification may, depending on the circumstances, suffice for the view to be taken that a mark other than an individual mark fulfils its function as an indication of origin. Indeed, Article 66 provides that a collective mark fulfils its function as an indication of origin where it distinguishes 'the goods or services of the members of the association which is the proprietor of the mark from those of other undertakings' and Article 74a states that a certification mark fulfils that function where it distinguishes 'goods or services which are certified by the proprietor of the mark in respect of material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics … from goods and services which are not so certified'. However, the dispute in the main proceedings concerns an individual mark registered for goods. As has been explained in paragraph 41 of the present

judgment, such a mark fulfils its function as an indication of origin where its use guarantees to consumers that the goods bearing it come from a single undertaking under the control of which they are manufactured and which is responsible for the quality of those goods, in their finished state and following the manufacturing process.

51 In the light of all the foregoing considerations, the answer to the first question referred is that Article 15(1) of Regulation No 207/2009 must be interpreted as meaning that the affixing of an individual EU trade mark, by the proprietor or with his consent, on goods as a label of quality is not a use as a trade mark that falls under the concept of 'genuine use' within the meaning of that provision. However, the affixing of that mark does constitute such genuine use if it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality. In that case, the proprietor of the mark is entitled to prevent, pursuant to Article 9(1)(b) of that regulation, the affixing by a third party of a similar sign on identical goods, if that affixing creates a likelihood of confusion on the part of the public.

Question 2

52 By its second question, the referring court asks, first, in essence, whether Article 52(1)(a) and Article 7(1)(g) of Regulation No 207/2009 must be interpreted as meaning that an individual mark may be declared invalid where the proprietor of the mark fails to ensure, by carrying out periodic quality controls at its licensees, that expectations relating to the quality which the public associates with the mark are being met.

53 In this respect, it should be noted first of all that Article 52(1)(a) of Regulation No 207/2009 provides that the mark is invalid not only if it is of such a nature as to deceive the public within the meaning of Article 7(1)(g) of the regulation, but also, generally, where the mark has been registered in breach of Article 7 of the regulation. Consequently, if there is no risk of deception within the meaning of Article 7(1)(g), the invalidity of the mark must, in principle, nevertheless be declared if it is clear that the registration of the mark took place in breach of one of the other grounds for refusal laid down in Article 7.

54 As regards the specific case of a risk of deception, it should be noted that that situation presupposes the existence of actual deceit or a sufficiently serious risk that the consumer will be deceived (judgments of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 41, and of 30 March 2006, *Emanuel*, C-259/04, EU:C:2006:215, paragraph 47).

55 Furthermore, in order to find that a mark had been registered in breach of the ground for refusal relating to the risk of deception, it must be established that the sign filed for the purposes of registration as a trade mark creates per se such a risk (see, to that effect, judgment of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraphs 42 and 43).

56 In the present case, in order to determine whether the cotton flower mark had been registered, on 22 May 2008, in breach of the ground of refusal laid down in Article 7(1)(g) of Regulation No 207/2009, it is for the referring court to examine whether the cotton flower sign filed by the VBB was capable per se of deceiving the consumer. The subsequent management, by the VBB, of its mark and licences for its use is irrelevant in this respect.

57 Accordingly, the answer to the first part of the second question referred for a preliminary ruling is that Article 52(1)(a) and Article 7(1)(g) of Regulation No 207/2009 must be interpreted as meaning that an individual mark cannot be declared invalid, on the basis of a joint application of those provisions,

because the proprietor of the mark fails to ensure, by carrying out periodic quality controls at its licensees, that expectations relating to the quality which the public associates with the mark are being met.

58 The second question referred for a preliminary ruling asks, secondly, in essence, whether Regulation No 207/2009 must be interpreted as meaning that its provisions on collective EU trade marks may be applied *mutatis mutandis* to individual EU trade marks.

59 In that regard, it is important to note that the scope of Articles 66 to 74 of Regulation No 207/2009, relating to collective EU trade marks, is expressly confined, according to the wording of Article 66(1) of the regulation, to marks described as such when applied for.

60 The demarcation of the applicability of those articles must be strictly adhered to, especially as the rules they introduce, such as those set out in Article 67 of the regulation concerning regulations governing use of the mark, go hand in hand with the requirement, when making the application for registration, to expressly describe the mark applied for as a collective mark. Therefore, it is not possible to apply those rules by analogy to individual EU trade marks.

61 Accordingly, the answer to the second part of the second question referred is that Regulation No 207/2009 must be interpreted as meaning that its provisions on collective EU trade marks may not be applied *mutatis mutandis* to individual EU trade marks.

Costs

62 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 (Second Chamber) hereby rules:

1. **Article 15(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark must be interpreted as meaning that the affixing of an individual EU trade mark, by the proprietor or with his consent, on goods as a label of quality is not a use as a trade mark that falls under the concept of 'genuine use' within the meaning of that provision. However, the affixing of that mark does constitute such genuine use if it guarantees, additionally and simultaneously, to consumers that those goods come from a single undertaking under the control of which the goods are manufactured and which is responsible for their quality. In that case, the proprietor of the mark is entitled to prevent, pursuant to Article 9(1)(b) of that regulation, the affixing by a third party of a similar sign on identical goods, if that affixing creates a likelihood of confusion on the part of the public.**

2. **Article 52(1)(a) and Article 7(1)(g) of Regulation No 207/2009 must be interpreted as meaning that an individual mark cannot be declared invalid, on the basis of a joint application of those provisions, because the proprietor of the mark fails to ensure, by carrying out periodic quality controls at its licensees, that expectations relating to the quality which the public associates with the mark are being met.**

3. **Regulation No 207/2009 must be interpreted as meaning that its provisions on collective EU trade marks may not be applied *mutatis mutandis* to individual EU trade marks.**

[Signatures]