Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber),

18 October 2012*

(Appeals — Community design — Regulation (EC) No 6/2002 — Articles 6, 25(1)(b) and (e), and 61 — Registered Community design or model representing a seated figure — Earlier Community figurative mark — Different overall impression — Degree of freedom of the designer — Informed user — Scope of judicial review — No statement of reasons)

In Joined Cases C-101/11 P and C-102/11 P,

TWO APPEALS pursuant to Article 56 of the Statute of the Court of Justice of the European Union, brought on 28 February 2011,

Herbert Neuman,

Andoni Galdeano del Sel,

residing in Tarifa (Spain), represented by S. Míguez Pereira, abogada,

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by J. Crespo Carrillo and A. Folliard-Monguiral, acting as Agents,

appellants,

the other party to the proceedings being:

José Manuel Baena Grupo, SA, established in Barcelona (Spain), represented by A. Canela Giménez, abogado,

applicant at first instance,

THE COURT (Sixth Chamber),

composed of U. Lõhmus (Rapporteur), acting as the President of the Sixth Chamber, A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

gives the following

* Language of the case: Spanish.

Judgment

1 By their respective appeals, Mr Neuman and Mr Galdeano del Sel, on the one hand, and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), on the other ('the appellants') seek to have set aside the judgment of the General Court of the European Union in Case T-513/09 *Baena Grupo* v *OHIM - Neuman and Galdeano del Sel (seated figure)* [2010] ECR II-00289 ('the judgment under appeal'), by which that court upheld the action for annulment brought by José Manuel Baena Grupo, SA ('Baena Grupo') against the decision of the Third Board of Appeal of the OHIM of 14 October 2009 (Case R 1323/2008-3), relating to invalidity proceedings between Mr Neuman and Mr Galdeano del Sel, on the one hand, and José Manuel Baena Grupo, SA, on the other ('the contested decision').

Legal context

2 Recital 14 in the preamble to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1), provides:

'The assessment as to whether a design has individual character should be based on whether the overall impression produced on an informed user viewing the design clearly differs from that produced on him by the existing design corpus, taking into consideration the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it belongs and the degree of freedom of the designer in developing the design.'

3 Article 4(1) of that regulation provides:

'A design shall be protected by a Community design to the extent that it is new and has individual character.'

4 Article 5 of that regulation is worded as follows:

'1. A design shall be considered to be new if no identical design has been made available to the public:

(a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;

(b) in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

2. Designs shall be deemed to be identical if their features differ only in immaterial details.'

5 Article 6 of the regulation provides:

'1. A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:

(a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;

(b) in the case of a registered Community design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.

2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.'

6 Under Article 7(1) and (2) of Regulation No 6/2002:

'1. For the purpose of applying Articles 5 and 6, a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(1)(a) and 6(1)(a) or in Articles 5(1)(b) and 6(1)(b), as the case may be, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

2. A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 and if a design for which protection is claimed under a registered Community design has been made available to the public:

(a) by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title; and

(b) during the 12-month period preceding the date of filing of the application or, if a priority is claimed, the date of priority.'

7 Article 25 of that regulation, entitled 'Grounds for invalidity', provides, in paragraphs 1(b) and (e), and in paragraph 3:

'1. A Community design may be declared invalid only in the following cases:

...

(b) if it does not fulfil the requirements of Articles 4 to 9;

...

(e) if a distinctive sign is used in a subsequent design, and Community law or the law of the Member State governing that sign confers on the right holder of the sign the right to prohibit such use;

...

3. The grounds provided for in paragraph (1)(d), (e) and (f) may be invoked solely by the applicant for or holder of the earlier right.

...'

8 Under Article 61(1) to (3) of that regulation:

'1. Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.

2. The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application or misuse of power.

3. The Court of Justice has jurisdiction to annul or to alter the contested decision.'

Background to the dispute

9 Baena Grupo is the holder of the following Community design No 426895-0002 ('the contested design'):



10 That design was lodged on 7 November 2005 and registered and published on 27 December 2005 for the following goods in Class 99-00 of the Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968, as amended ('the Locarno Agreement'): 'T-shirts (Ornamentation for); Caps (Ornamentation for); Stickers (Ornamentation for); Printed matter, including advertising materials (Ornamentation for)'.

11 On 18 February 2008, Mr Neuman and Mr Galdeano del Sel submitted an application to OHIM for a declaration of invalidity of the contested design, pursuant to Article 25(1)(b) and (e) of Regulation No 6/2002. In their application for a declaration of invalidity, they claimed, first, that the contested design was not new and lacked individual character within the meaning of Article 4 of that regulation, read in conjunction with Articles 5 and 6 of that regulation, and, second, that a distinctive sign, within the meaning of Article 25(1)(e) of that regulation, was used in that design.

12 In support of their application for a declaration of invalidity, Mr Neuman and Mr Galdeano del Sel relied on the following earlier Community figurative mark No 1312651 ('the earlier mark'):



13 That mark was registered on 7 November 2000 for goods in Classes 25, 28 and 32 of the Nice Agreement concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks of 15 June 1957, as revised and amended ('the Nice Agreement'), which correspond, for each of those classes, to the following description:

— Class 25: 'Clothing, footwear, headgear';

— Class 28: ‘Games and playthings; gymnastic and sporting articles’;

— Class 32: ‘Beers; mineral and aerated waters, other non-alcoholic drinks; fruit drinks and fruit juices, syrups and other preparations for making beverages’.

14 By decision of 15 July 2008, the Cancellation Division of OHIM upheld the application for a declaration of invalidity of the contested design on the basis of Article 25(1)(e) of Regulation No 6/2002.

15 On 16 September 2008, Baena Grupo filed a notice of appeal with OHIM under Articles 55 to 60 of Regulation No 6/2002, against the decision of the Cancellation Division.

16 By the contested decision, the Third Board of Appeal of OHIM (‘the Board of Appeal’) found that the Cancellation Division had erred in considering that the earlier mark had been used in the contested design. Nevertheless, it found that the contested design did not have individual character, because it did not produce on the informed user, namely young people or children who habitually purchase T-shirts, caps and stickers or users of printed material, an overall impression that differed from that produced by the earlier mark. Thus, pursuant to Article 60(1) of Regulation No 6/2002, the Board of Appeal confirmed the invalidity of the contested design, but on the basis of Article 25(1)(b) of that regulation, read in conjunction with Article 6(1) thereof.

The proceedings before the General Court and the judgment under appeal

17 By application lodged at the Registry of the General Court on 22 December 2009, Baena Grupo brought an action for annulment of the contested decision. In support of its application, it relied on a single plea, alleging infringement of Article 6 of Regulation No 6/2002. It claimed that the differences between the earlier mark and the contested design are such that the overall impression produced on the informed user by each of those silhouettes is different.

18 By the judgment under appeal, the General Court annulled the contested decision.

19 The General Court first considered, at paragraph 20 of the judgment under appeal, that a comparison should be made between, on the one hand, the overall impression produced by the contested design and, on the other, the overall impression produced on the informed user by the earlier mark, which constitutes a design which has been made available.

20 The General Court pointed out, at paragraphs 21 and 22 of the judgment under appeal, that the overall impression produced on the informed user by the two silhouettes at issue is determined to a large extent by the facial expression of each of them. The General Court emphasised that the difference in the facial expression of the two silhouettes constitutes a fundamental characteristic that is remembered by the informed user, as correctly defined by the Board of Appeal.

21 The General Court then noted, at paragraph 23 of the judgment under appeal, that that expression, combined with the position of the body leaning forwards, which gives the impression of a degree of irritation, will induce the informed user to identify the ‘earlier design’ as an angry character. By contrast, the overall impression created by the contested design is not characterised by the display of any feeling, either on the basis of the facial expression or the position of the body, which is characterised by a leaning back.

22 In that regard, the General Court affirmed, at paragraph 24 the judgment under appeal, that ‘the difference in the facial expression will be clear to young people buying T-shirts and caps [, and] will be all the more important for children using stickers to personalise items, who will be more likely to pay particular attention to the feelings expressed by each character appearing on a sticker’.

23 Finally, the General Court considered, at paragraph 25 of the judgment under appeal, that the differences between the two silhouettes 'are sufficiently significant to create a different overall impression on the informed user, in spite of similarities concerning other aspects and the significant freedom enjoyed by the designer of silhouettes such as those at issue in the present case'.

24 The General Court concluded from this, at paragraph 26 of the judgment under appeal, that the Board of Appeal erred in considering that the contested design did not produce on the informed user an overall impression that is different to that produced by the 'earlier design' relied on in support of the application for a declaration of invalidity.

The proceedings before the Court and forms of order sought by the parties

25 By order of the President of the Court of 11 April 2011, Cases C-101/11 P and C-102/11 P were joined for the purposes of the written and oral procedure and of the judgment.

26 By their appeal, Mr Neuman and Mr Galdeano del Sel claim that the Court should:

— set aside the judgment under appeal;

— declare the contested design invalid or, in the alternative, refer the case back to the General Court, and

— order Baena Grupo to pay the costs incurred in connection with this appeal and before the General Court.

27 By its appeal OHIM asks the Court to:

— set aside the judgment under appeal;

— deliver a new judgment on the substance of the case and reject the action brought against the contested decision, or refer the case back to the General Court, and

— order Baena Grupo to pay the costs.

28 In its response, Baena Grupo asks the Court to:

— declare the appeal brought in Case C-101/11 P inadmissible or, in the alternative, dismiss that appeal,

— dismiss as unfounded the appeal brought in Case C-102/11 P, and

— order the appellants to pay the costs.

The appeal

29 In support of their appeal, Mr Neuman and Mr Galdeano del Sel put forward three grounds of appeal. The first two grounds allege that the General Court erred in law in the application, respectively, of Article 25(1)(b) of Regulation No 6/2002, read in conjunction with Articles 4 to 9 thereof and Article 25(1)(e) of that regulation. The third ground alleges infringement, by the General Court, of the obligation to state reasons in the judgment under appeal.

30 In support of its appeal, OHIM raises two grounds of appeal alleging infringement by the General Court, first, of Article 61 of Regulation No 6/2002 and, secondly, of Article 25(1)(b) of that regulation, read in conjunction with Article 6 thereof. The second ground is divided into two parts, according to which OHIM claims, first, that the General Court confused the specific criteria of trade mark law and those applicable to the law on Community designs and, secondly, that it failed to fulfil its obligation to state reasons.

The first ground of appeal put forward by OHIM, alleging infringement of Article 61 of Regulation No 6/2002

Arguments of the parties

31 First, referring to Case C-38/09 *Schräder* v *OCVV* [2010] ECR I-3209, paragraph 77, OHIM criticises the General Court for having carried out, during the assessment of the legality of the contested decision, a very detailed examination of the 'Community designs at issue'.

32 OHIM claims that the review of the validity of the designs, which is characterised by a high level of technical complexity, concerns, in the context of Article 25(1)(b) and (d) of Regulation No 6/2002, solely the determination of the degree of freedom of the designer. It considers that, by failing to limit its review to manifest errors of assessment of the validity of such designs, the General Court exceeded the scope of Article 61 of that regulation.

33 Secondly, OHIM argues that, by considering that the expression of feelings of the characters of the 'designs at issue' is more important than the graphic representation of those designs, the General Court substituted its own reasoning for that of the Board of Appeal. By so doing, the General Court carried out a new assessment of the facts rather than limiting its examination to a review of the legality of the contested decision.

34 In that regard, OHIM considers that, by failing to indicate the nature of the error committed by the Board of Appeal when applying Article 25(1)(b) of Regulation No 6/2002, read in conjunction with Article 6 thereof, the General Court does not allow OHIM to draw conclusions from the judgment under appeal for the purpose of correctly applying Article 6 of that regulation.

35 Baena Grupo considers that OHIM's argument is unfounded. According to it, the General Court has total freedom in the assessment of the facts of the case. In that regard it refers to the judgment in Case C-265/97 P *VBA* v *Florimex and Others* [2000] ECR I-2061, where the Court referred, in the context of a subsequent appeal brought before it, to the assessment of the evidence carried out by the General Court.

Findings of the Court

36 It is necessary to verify whether the General Court exceeded the limits of its review and substituted its own assessment for that of OHIM.

37 In that context, it should be recalled that, under Article 61(2) of Regulation No 6/2002, an action may be brought before the General Court against decisions of the Boards of Appeal of OHIM for infringement of the Treaty, of that regulation or of any rule of law relating to their application. It follows that the General Court has jurisdiction to conduct a full review of the legality of OHIM's assessment of the particulars submitted by an applicant (see Case C-263/09 P *Edwin* v *OHIM* [2011] ECR I-5853, paragraph 52, and Case C-281/10 P *PepsiCo* v *Grupo Promer Mon Graphic* [2011] ECR I-10153, paragraph 66).

38 Accordingly, pursuant to that article, the General Court is called upon to assess the legality of the decisions of the Boards of Appeal by reviewing their application of European Union law, having regard, in particular, to the facts which were submitted to them (see, by analogy, Case C-16/06 P *Les Éditions Albert René* v *OHIM* [2008] ECR I-10053, paragraph 38, and order of 28 March 2011 in Case C-418/10 P *Herhof* v *OHIM*, paragraph 47).

39 In particular, the General Court can carry out a full review of the legality of the decisions of OHIM's Boards of Appeal, if necessary examining whether those boards have made a correct legal classification of the facts of the dispute or whether their assessment of the facts submitted to them was flawed (see, by analogy, *Les Éditions Albert René* v *OHIM*, paragraph 39, and *Herhof* v *OHIM*, paragraph 48).

40 Where it is called upon to assess the legality of a decision of the Board of Appeal of OHIM, the General Court cannot be bound by an incorrect assessment of the facts by that board, since that assessment is part of the findings whose legality is being disputed before the General Court (see, by analogy, *Les Éditions Albert René* v *OHIM*, paragraph 48).

41 Admittedly, the General Court may afford OHIM some latitude, in particular where OHIM is called upon to perform highly technical assessments, and restrict itself, in terms of the scope of its review of the Board of Appeal's decisions in industrial design matters, to an examination of manifest errors of assessment (*PepsiCo* v *Grupo Promer Mon Graphic*, paragraph 67).

42 However, in the present case, OHIM has not established that the assessment in question required highly technical assessments that justify the recognition of some latitude, such that the scope of the General Court's review is limited to manifest errors.

43 Furthermore, Baena Grupo argued before the General Court that the Board of Appeal, by considering that the contested design did not have individual character, as it did not produce on the informed user an overall impression that differed from that produced by the earlier mark, infringed Article 6 of Regulation No 6/2002.

44 It follows that, since Baena Grupo called into question the Board of Appeal's assessment relating to the overall impression produced on the informed user by each of the silhouettes at issue, the General Court was competent to examine the Board of Appeal's assessment of the similarity of the earlier mark and the contested design (see, by analogy, *Les Éditions Albert René* v *OHIM*, paragraph 47).

45 Consequently, the General Court could, without making any error of law, carry out, at paragraphs 20 to 25 of the judgment under appeal, a specific examination of the assessments made by the Board of Appeal and then annul the contested decision.

46 OHIM's first ground of appeal must, therefore, be rejected as unfounded.

The first part of the second ground of appeal put forward by OHIM and the first ground of appeal put forward by Mr Neuman and Mr Galdeano del Sel, alleging infringement of Article 25(1)(b) of Regulation No 6/2002, read in conjunction with Articles 4 to 9 of that regulation

Arguments of the parties

47 First, OHIM claims that the General Court confused the specific criteria of trade mark law and those applicable to the law on Community designs. According to it, trade mark law tends to safeguard the general interest of consumers so that they are not mistaken when purchasing goods or services covered by a trade mark, whereas the law on Community designs is intended to protect private interests, namely those of the operator who develops or exploits the creation of a shape, regardless of

whether or not there is a risk of confusion concerning the commercial origin of the purchased product. In particular, it criticises the General Court for having based the comparison of the 'designs at issue', at paragraphs 22 and 23 of the judgment under appeal, on the imperfect recollection that the informed user retains in his memory.

48 In that regard, Mr Neuman, Mr Galdeano del Sel and OHIM consider that that comparison should be based, not on the imperfect recollection of the informed user, but on a direct comparison of the silhouettes at issue.

49 Secondly, OHIM criticises the General Court for having erred in law in that, at paragraph 24 of the judgment under appeal, it did not base its examination of the impression produced by the 'designs at issue' on the perception of the whole of the relevant public. It limited its examination of those designs to the perception of a part of the relevant public only, namely that of young users of T-shirts, caps and stickers.

50 Thirdly, Mr Neuman and Mr Galdeano del Sel argue that by considering, at paragraph 21 of the judgment under appeal, that the overall impression produced by the two silhouettes at issue on the informed user is determined by the facial expression of each of them, the General Court erred in law. They claim that the contested design lacks individual character and that the slight differences in the expression of the two silhouettes at issue have no effect on the overall impression that they produce. In that regard, they emphasise the identical nature of the goods covered and of the public to which they are addressed. Furthermore, they state that the General Court, at paragraph 25 of the judgment under appeal, admitted that the designers of silhouettes enjoy a significant degree of freedom.

51 Baena Grupo considers that, by their arguments, Mr Neuman and Mr Galdeano del Sel merely challenge the factual analysis which the General Court undertook and thus seek to have the Court substitute its own assessment for that of the General Court.

52 Baena Grupo also claims that OHIM's complaint concerning the relevant public is inadmissible on the ground that the General Court was not bound to rule on it.

Findings of the Court

53 With regard, first, to the alleged error in law committed by the General Court when comparing the earlier mark and the contested design, it should be noted, first, that Regulation No 6/2002 does not include a definition of the concept of 'informed user' that it applies. However, that concept must be understood as lying somewhere between that of the average consumer, applicable in trade mark matters, who need not have any specific knowledge and who, as a rule, makes no direct comparison between the trade marks at issue, and the sectoral expert, who is an expert with detailed technical expertise. Thus, the concept of the 'informed user' may be understood as referring, not to a user of average attention, but to a particularly observant one, either because of his personal experience or his extensive knowledge of the sector in question (see *PepsiCo* v *Grupo Promer Mon Graphic*, paragraph 53).

54 In that regard, it is true that the very nature of the informed user, as defined by the Court, means that, when possible, he will make a direct comparison between the earlier mark and the contested design. However, it cannot be ruled out that such a comparison may be impracticable or uncommon in the sector concerned, in particular because of specific circumstances or the characteristics of the items which the earlier mark and the contested design represent (see, to that effect, *PepsiCo* v *Grupo Promer Mon Graphic*, paragraph 55).

55 Therefore, the General Court cannot reasonably be criticised as having erred in law on the ground that it assessed the overall impression produced by the earlier mark and the contested design without starting from the premiss that an informed user would in all likelihood make a direct comparison of them (see, to that effect, *PepsiCo* v *Grupo Promer Mon Graphic*, paragraph 56).

56 That is true all the more so since, in the absence of any precise indications to that effect in Regulation No 6/2002, the European Union legislature cannot be regarded as having intended to limit the assessment of designs to a direct comparison (*PepsiCo* v *Grupo Promer Mon Graphic*, paragraph 57).

57 It follows that, when comparing the earlier mark and the contested design, the General Court did not err in law by basing its reasoning, at paragraphs 22 and 23 of the judgment under appeal, on the informed user's imperfect recollection of the overall impression produced by the two silhouettes.

58 Consequently, that complaint must be rejected as unfounded.

59 Secondly, with regard to the complaint that the General Court erred in law by limiting its examination of the earlier mark and of the contested design to the perception of a part of the relevant public, it should be noted, at the outset, that this complaint is not, contrary to what Baena Grupo claims, inadmissible. It is directed at an error of law allegedly committed by the General Court in the interpretation or application of Regulation No 6/2002 and could, if established, invalidate the General Court's reasoning in its entirety.

60 With regard to the merits, it must be stated that this complaint of OHIM is based on a flawed reading of the judgment under appeal. When comparing the earlier mark and the contested design, the General Court referred, at paragraph 22 of the judgment under appeal, to the informed user 'as correctly defined by the Board of Appeal'.

61 The General Court thus took into consideration the whole of the relevant public as defined by the Board of Appeal, namely young people, children and users of printed matter, including advertising materials. The same applies to the reasoning of the General Court at paragraph 23 of the judgment under appeal, when reference was made to that informed user during its examination of the impression produced by the earlier mark and the contested design. Subsequently, at paragraph 24 of the judgment under appeal, the General Court affirmed, in particular, that the difference in the facial expression of the two silhouettes will be clear to young people and children.

62 Consequently, it cannot validly be complained that the General Court did not base its examination of the silhouettes on the whole of the relevant public.

63 Thirdly, it should be noted that Mr. Neuman and Mr Galdeano del Sel, in essence, criticise the General Court for having considered that it is the facial expression of the two silhouettes that determines the overall impression of the earlier mark and of the contested design on the informed user.

64 In that regard, it must be stated that, by their arguments, Mr Neuman and Mr Galdeano del Sel are merely calling into question the factual analysis undertaken by the General Court in the context of its assessment of the overall impression produced by the earlier mark and the contested design and thus seek to have the Court substitute its own assessment for that of the General Court.

65 Without alleging or demonstrating that the General Court had distorted the facts that had been submitted to it, Mr Neuman and Mr Galdeano del Sel have merely criticised the General Court for having wrongly assessed the circumstances of the present case in order to find that the contested design produced on the informed user an overall impression that differed from that produced by the earlier mark relied on in support of the application for a declaration of invalidity.

66 It is, however, settled case-law that the General Court has exclusive jurisdiction to find the facts, save where a substantive inaccuracy in its findings is apparent from the documents submitted to it, and to appraise those facts. That appraisal of the facts thus does not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice in an appeal (Case C-144/06 P *Henkel* v *OHIM* [2007] ECR I-8109, paragraph 49 and case-law cited).

67 This complaint must therefore be rejected as inadmissible.

68 It follows from the above that the second ground of appeal of OHIM and the first ground of appeal of Mr Neuman and Mr Galdeano del Sel must be dismissed in their entirety.

The second ground of appeal put forward by Mr Neuman and Mr Galdeano del Sel, alleging infringement of Article 25(1)(e) of Regulation No 6/2002

Arguments of the parties

69 Mr Neuman and Mr Galdeano del Sel criticise the General Court for not having applied Article 25(1)(e) of that regulation. According to them, all of the conditions required to conclude that there is a likelihood of confusion between the earlier mark and the contested design have been met. Consequently, by failing to rule on that provision and by not prohibiting the use of the contested design, the General Court erred in law.

70 Baena Grupo considers that ground of appeal is inadmissible in that it seeks to call into question findings of a factual nature made by the General Court in the judgment under appeal.

Findings of the Court

71 It should be noted that this ground of appeal was not raised before the General Court for the purposes of setting aside the contested decision and that, in any event, it does not in any way constitute a matter of public policy which the General Court had to raise of its own motion.

72 According to Article 113(2) of the Rules of Procedure of the Court of Justice, the subject-matter of the proceedings before the General Court may not be changed in the appeal. The Court's jurisdiction is confined, in an appeal, to a review of the findings of law on the pleas argued before the General Court (see, in particular, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 59; judgment of 15 March 2007 in Case C-171/06 P *T.I.M.E. ART* v *OHIM*, not published in the ECR, paragraph 24, and judgment of 20 September 2007 in Case C-193/06 P *Nestlé* v *OHIM*, not published in the ECR, paragraph 56).

73 Therefore, the present ground of appeal must be rejected as inadmissible.

The second part of the second ground of appeal put forward by OHIM and the third ground of appeal put forward by Mr Neuman and Mr Galdeano del Sel, alleging failure to state reasons in the judgment under appeal

Arguments of the parties

74 OHIM claims that, by failing, first, to state the reasons why 'the difference of facial expression will be obvious to young people who buy T-shirts and caps' as stated at paragraph 24 of the judgment under appeal, and, secondly, by referring to the public consisting of the users of 'printed matter, including advertising materials', the General Court failed to fulfil its obligation to state reasons.

75 Mr Neuman and Mr Galdeano del Sel also criticise the General Court for not giving precise, exact and coherent reasons for the judgment under appeal, in breach of the procedural rights of the appellants.

76 With regard to the complaints of OHIM, Baena Grupo considers that the General Court was not bound to rule on the relevant public, as mentioned in paragraph 52 above, and, consequently, its judgment cannot be vitiated by a failure to state reasons.

77 With regard to the complaints of Mr Neuman and Mr Galdeano del Sel, Baena Grupo pleads their inadmissibility. It claims that Mr Neuman and Mr Galdeano del Sel did not indicate which parts of the judgment under appeal are vitiated by such a failure to state reasons.

Findings of the Court

78 With regard to the infringement of the obligation to state reasons relied on by OHIM, that is based on the allegation that the General Court omitted, first, to provide the reasons why 'the difference of facial expression will be obvious to young people who buy T -shirts and caps' and, secondly, by referring to the public consisting of the users of 'printed matter, including advertising materials'.

79 In that regard, it should be observed that the obligation to state the reasons on which a judgment is based arises under Article 36 of the Statute of the Court of Justice of the European Union, which applies to the General Court by virtue of the first paragraph of Article 53 of the Statute, and Article 81 of the Rules of Procedure of the General Court (see judgment of 4 October 2007 in Case C-311/05 P *Naipes Heraclio Fournier* v *OHIM*, paragraph 51 and the case-law cited).

80 It is settled case-law that that judgments of the General Court must contain an adequate statement of reasons to enable the Court of Justice to exercise its power of review (see, in particular, *Naipes Heraclio Fournier* v *OHIM*, paragraph 52 and the case-law cited).

81 In this case, having regard, in particular, to the findings made in paragraphs 60 to 62 of the present judgment, it suffices to state that the reasoning followed by the General Court in the judgment under appeal is in itself clear and intelligible and enables the reasons to be known why the General Court upheld the single plea put before it by Baena Grupo. The judgment under appeal is not, therefore, vitiated by a failure to state reasons.

82 This ground of appeal must, therefore, be dismissed as being unfounded.

83 In view of the above, the present appeals must be rejected as being, in part, inadmissible and, in part, unfounded.

Costs

84 Under Article 69(2) of those Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

85 Since Mr Neuman and Mr Galdeano del Sel have been unsuccessful with their appeal in Case C-101/11 P, they must be ordered to pay the costs of that appeal, in accordance with the form of order sought by Baena Grupo.

86 Since OHIM has been unsuccessful with its appeal in Case C-102/11 P, it must be ordered to pay the costs of that appeal, in accordance with the form of order sought by Baena Grupo.

On those grounds, the Court (Sixth Chamber) hereby

1. **Dismisses the appeals;**

2. **Orders Mr Neuman and Mr Galdeano del Sel to bear their own costs and to pay those incurred by José Manuel Baena Grupo, SA in relation to the appeal in Case C-101/11 P;**

3. **Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs and to pay those incurred by José Manuel Baena Grupo, SA in relation to the appeal in Case C-102/11 P.**

[Signatures]