

Summary of the pleas in law

concerning the Appeal by Appellant Hochmann Marketing GmbH, Dornhofstrasse 34, DE-63263 Neu-Isenburg

The appellant brings an appeal under Article 56 of the Statute of the Court of Justice against the judgment of the General Court of 12 December 2017, T-771/15 (Hochmann Marketing GmbH, formerly Bittorrent Marketing GmbH against European Union Intellectual Property Office, Avenida de Europa 4, ES-03008 Alicante), by which the General Court dismissed its action seeking annulment of the contested decision of the Fifth Board of Appeal in Case R 2275/2013-5 of 31 August 2015.

The appellant submits the following pleas: an infringement of Art. 76 (1) first limb and (2) CTMR, in conjunction with a violation of the right to a fair hearing according to Art. 47 of the Charter of Fundamental Rights of the European Union and an infringement of Art. 51 (1)(a) CTMR.

1. Infringement of Art. 76 CTMR by rejecting the appellant's items of evidence

In its judgement of 12 December 2017, the General Court ruled that the Board of Appeal did not need to take into account the appellant's submissions in the proceedings before the EUIPO. The appellant argues that this decision is an infringement of Art. 76 (1) first limb and (2) CTMR. The Board of Appeal has a broad discretion to take into account items of evidence submitted by a trade mark proprietor after the passing of a deadline. Considering all facts, and especially considering that the Cancellation Division had failed to respond to a written request concerning the reception of a fax of 21 November 2011, EUIPO should have taken into account the items of evidence presented during the proceedings before the Cancellation Division and the Board of Appeal.

2. Infringement of Art. 76 CTMR by not considering the intervener's evidence

The appellant also argues that the decision by the General Court that the Board of Appeal did not need to take into account the evidence submitted by the intervener at first instance during the proceedings before the Cancellation Division and the Board of Appeal infringes on Art. 76 (1) first limb and (2) CTMR.

3. Infringement of Art. 76 CTMR by not considering a judgment of the Higher Regional Court of Berlin

In the judgment of 12 December 2017, the General Court stated on that Community trade mark law is an autonomous system, and EUIPO does not have to consider proceedings before a German Regional Court or Higher Regional Court, when subject-matter of these proceedings was a German word mark. The appellant

argues that in a case of an identity of the protected sign and an identity of the protected services a judgment by a German Court concerning a German word mark has to be taken into consideration.

4. Infringement of Art. 51 (1)(a) CTMR due to failure to consider evidence submitted by the appellant

The appellant also claims an Infringement of Art. 51 (1)(a) CTMR by a decision of the Board of Appeal that evidence submitted in the proceedings before EUIPO (the Cancellation Division and the Board of Appeal) would not have been sufficient evidence of genuine use to preserve the appellant's rights. The General Court did not determine in its judgment whether the evidence submitted is sufficient evidence of a genuine use and preserves the rights concerning the protected services of the appellant's registered Community trade mark.