

ORDER OF THE COURT (Ninth Chamber)

12 February 2015 (\*)

(Appeals — Community trade mark — Figurative mark in colour including the word element ‘ARIS’ — Opposition by the proprietor of the Community figurative mark in red and blue including the word elements ‘ARISA ASSURANCES S.A.’ — Refusal of registration)

In Case C-370/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union,  
brought on 29 July 2014,

**Argo Group International Holdings Ltd**, established in Hamilton, Bermuda (United Kingdom), represented by F. Petillion and J. Janssen, advocaten,

appellant,

the other parties to the proceedings being:

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM),

defendant at first instance,

**Arisa Assurances SA**, established in Luxembourg (Luxembourg),

intervener at first instance,

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan (Rapporteur) and A. Prechal,  
Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the decision taken, after hearing the Advocate General, to give a decision by reasoned order in accordance with Article 181 of the Rules of Procedure of the Court,

makes the following

## **Order**

1 By its appeal, Argo Group International Holdings Ltd ('Argo Group') asks the Court to set aside the judgment of the General Court of the European Union in *Argo Group International Holdings v OHIM — Arisa Assurances (ARIS)*, T-247/12, EU:T:2014:258 ('the judgment under appeal'), by which that Court dismissed its action for annulment of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 9 March 2012 (Case R 193/2011-2) relating to opposition proceedings between Arisa Assurances SA and Argo Group ('the contested decision').

## **Legal context**

2 Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) provides:

'1. Upon opposition by the proprietor of an earlier trade mark, the trade mark applied for shall not be registered:

...

(b) if because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected; the likelihood of confusion includes the likelihood of association with the earlier trade mark.'

## **Background to the dispute**

3 On 13 November 2008, Art Risk Insurance and Information Services Corp. ('Art Risk Insurance and Information Services') filed an application for registration of a Community trade mark with OHIM.

4 Registration as a mark was sought for the following figurative sign:

Image not found

5 The services in respect of which registration was sought are in Class 36 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond to the following description: 'Insurance services; writing title insurance for fine art, cultural artifacts [sic], antiquities, and other collectable tangible personal property; financial risk management services for the art and art-associated industries, including art museums, art foundations, cultural and non-profit institutions, private collectors, artists, art dealers, and art-associated banking, fiduciary, insurance, legal, and non-profit providers; financial risk management services in relation to other forms of insurance, including property and casualty insurance for the art and art-associated industries'.

6 Art Risk Insurance and Information Services was already the proprietor of the Community word mark ARIS, registered on 12 September 2005.

7 On 18 June 2009, Arisa Assurances SA filed a notice of opposition, pursuant to Article 41 of Regulation No 207/2009, to registration of the mark at issue in respect of the services referred to in paragraph 5 of this order.

8 That opposition was based on the earlier Community figurative mark reproduced below, which was filed on 8 July 1996 and registered on 18 January 2000 under the number 307470 in respect of 'insurance and reinsurance' in Class 36 of the Nice Agreement:

Image not found

9 The ground relied on in support of that opposition was that set out in Article 8(1)(b) of Regulation No 207/2009.

10 By decision of 23 November 2010, the Opposition Division of OHIM upheld the opposition brought by Arisa Assurances SA and rejected the application for registration of the mark at issue.

11 On 20 January 2011, Art Risk Insurance and Information Services filed a notice of appeal against that decision with the Board of Appeal of OHIM, pursuant to Articles 58 to 64 of Regulation No 207/2009.

12 On 3 March 2011, Art Risk Insurance and Information Services applied for the transfer of its trade mark application to Argo Group. The transfer was entered in the Register of Community trade marks on 4 March 2011.

13 By the contested decision, the Second Board of Appeal of OHIM dismissed the appeal. It reached the same conclusion as the Opposition Division, finding that there was a likelihood of confusion and rejecting the contention that the two signs in question had coexisted in the European Union.

### **The procedure before the General Court and the judgment under appeal**

14 On 6 June 2012, Argo Group brought an action for annulment of the contested decision before the General Court. In support of that action, it put forward four pleas in law alleging, in essence, infringement of Article 8(1)(b) of Regulation No 207/2009.

15 By the judgment under appeal, the General Court dismissed that action as unfounded.

16 The General Court first of all held, in paragraph 31 of the judgment under appeal, that the Second Board of Appeal of OHIM had not erred in its definition of the relevant public in the circumstances and nor had it erred as regards the public that it took into consideration when assessing the likelihood of confusion.

17 Next, the General Court held, in paragraph 52 of the judgment under appeal, that Argo Group had failed to establish that the Second Board of Appeal of OHIM was wrong to find, in the contested decision, that the signs at issue were similar. In that regard, the General Court inter alia stated, in paragraph 41 of that judgment, that that Board of Appeal had not erred in its determination of the dominant components of the signs at issue and, in paragraphs 46 and

47 of that judgment, that the Board of Appeal had carried out an overall assessment of the signs at issue when assessing the phonetic and conceptual similarity of those signs.

18 Lastly, the General Court held, in paragraph 60 of the judgment under appeal, that the Second Board of Appeal of OHIM had been right to conclude that there was a likelihood of confusion and to dismiss the appeal against the decision of the Opposition Division of OHIM.

### **Form of order sought on appeal**

19 By its appeal, Argo Group claims that the Court should, first, set aside the judgment under appeal, secondly, annul the contested decision and the decision of the Opposition Division of OHIM of 23 November 2010 or, in the alternative, remit the case to the General Court and, thirdly, order OHIM to pay the costs.

### **The appeal**

20 Under Article 181 of its Rules of Procedure, where an appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court of Justice may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal in whole or in part.

21 It is appropriate to apply that provision to the present case.

22 In support of its appeal, Argo Group puts forward a single ground of appeal alleging infringement of Article 8(1)(b) of Regulation No 207/2009, which is divided into five parts.

#### The first part of the single ground of appeal

23 The first part of the single ground of appeal is based on the allegedly incorrect application of Article 8(1)(b) of Regulation No 207/2009 on account of a misinterpretation of the judgment in *Grupo Sada v OHIM — Sadia (GRUPO SADA)*, T-31/03, EU:T:2005:169. Argo Group submits that, a correct interpretation of that judgment requires account to be taken of the coexistence on the market of the Community word mark ARIS, registered on 12 September 2005, and the earlier Community figurative mark ARISA ASSURANCES S.A. in the course of the global assessment of the likelihood of confusion. According to Argo Group, that word mark is identical to the figurative mark ARIS and there is no valid reason for not having taken it into account.

24 In that regard, it must be borne in mind that, in accordance with Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court thus has exclusive jurisdiction to find and appraise the relevant facts and assess the evidence. The appraisal of those facts and the assessment of that evidence thus do not, save where the facts and evidence are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (see, *inter alia*, order in *Cooperativa Vitivinícola Arousana v OHIM*, C-649/11 P, EU:C:2012:603, paragraph 39).

25 In paragraph 57 of the judgment under appeal, the General Court simply reproduced, word for word, the finding in paragraph 86 of the judgment in *Grupo Sada v OHIM — Sadia (GRUPO SADA)*, EU:T:2005:169, without in any way interpreting it. Argo Group is thus, in reality, disputing the appraisal of the facts which the General Court carried out in the light of that finding.

26 It is apparent from a reading of paragraphs 53 to 60 of the judgment under appeal that the General Court carried out, in the light of the relevant case-law, an overall assessment of the likelihood of confusion and an analysis relating to the coexistence of the earlier marks on the market. Given that the conclusion which the General Court reached, in the light of the evidence which it had, is part of the appraisal of the facts and, consequently, falls outside of the jurisdiction of the Court of Justice in an appeal (see orders in *Royal Appliance International v OHIM*, C-448/09 P, EU:C:2010:384, paragraph 80, and *Yorma's v OHIM*, C-191/11 P, EU:C:2012:62, paragraph 53), it is necessary to reject as manifestly inadmissible the first part of the single ground of appeal, which, in essence and under the guise of an alleged error of interpretation of an earlier judgment of the General Court, calls into question that appraisal of the facts.

*The second part of the single ground of appeal*

27 In the context of the second part of the single ground of appeal, Argo Group alleges that the General Court infringed the principles of legal certainty and of the protection of legitimate expectations. It submits that, as the figurative mark in respect of which registration is sought is a variant of an already existing word mark, the General Court thus failed to have regard to Argo Group's legitimate expectation of being able to use its mark in various forms and using various fonts.

28 In that regard, it is, however, sufficient to note at the outset that, as is apparent from settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court would mean allowing that party

to bring before the Court, whose jurisdiction in appeals is limited, a wider case than that heard by the General Court. In an appeal the Court's jurisdiction is thus confined to examining the assessment by the General Court of the pleas argued before it (see, inter alia, judgment in *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 165).

29 It must be stated that, before the General Court, Argo Group did not claim that failure to take into account the alleged coexistence of the marks would, in the circumstances of this case, result in infringement of the principles of legal certainty and of the protection of legitimate expectations (see, by analogy, *Dansk Rørindustri and Others v Commission*, EU:C:2005:408, paragraph 166).

30 Consequently, the second part of the single ground of appeal must be rejected as manifestly inadmissible.

#### *The third part of the single ground of appeal*

31 By the third part of the single ground of appeal, Argo Group submits that the judgment under appeal unjustifiably limits the harmonious development of economic activities throughout the European Union. In that respect, Argo Group refers to the American law principle called 'Morehouse defense' to the effect that the relevant public cannot be confused by a mark in respect of which registration has been applied for if the trade mark applicant has already previously registered a substantially similar mark which has not been challenged by the opponent.

32 As is apparent from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice and from Articles 168(1)(d) and 169(2) of the Rules of Procedure of the Court of Justice, an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside as well as the legal arguments specifically advanced in support of the appeal (see judgment in *Acino v Commission*, C-269/13 P, EU:C:2014:255, paragraph 35 and the case-law cited, and order in *Zoo Sport v OHIM*, C-676/13 P, EU:C:2014:2080, paragraph 17).

33 That requirement is not satisfied by a ground of appeal which, without even including an argument specifically identifying the error allegedly vitiating the judgment under appeal, merely reproduces arguments previously submitted before the General Court. Such a ground of appeal amounts in reality to no more than a request for re-examination of a plea submitted before the General Court, which the Court of Justice does not have jurisdiction to undertake

(see, inter alia, judgments in Eurocermex v OHIM, C-286/04 P, EU:C:2005:422, paragraph 50, and Evropaïki Dynamiki v ECB, C-401/09 P, EU:C:2011:370, paragraph 55).

34 In the present case, Argo Group confines itself, in criticising the judgment under appeal, to reiterating the arguments submitted at first instance, which seek to establish why the Community trade mark system should favour the registration, by the proprietor of a trade mark, of a similar mark.

35 The fact remains that the General Court responded to those arguments in a full and detailed manner in paragraphs 55 to 59 of the judgment under appeal. The General Court inter alia dwelt, in paragraph 58 of that judgment, on the fact that not only is the registered word mark ARIS different from the figurative marks at issue, but also that the evidence provided by Argo Group concerns only the sign in respect of which registration is applied for and does nothing to indicate the presence of that sign on the European Union market; nor does it give any indication of how the relevant public has been exposed to the marks at issue on that market.

36 Argo Group does not, in that regard, claim that there is any distortion of the facts and evidence submitted to the General Court.

37 Consequently, the third part of the single ground of appeal must be rejected as manifestly inadmissible.

#### *The fourth part of the single ground of appeal*

38 In the context of the fourth part of the single ground of appeal, Argo Group complains, in essence, that the General Court distorted the facts by upholding, in paragraph 46 of the judgment under appeal, the unfounded assessment of the Second Board of Appeal of OHIM that the relevant public would not take the elements ‘assurances’ or ‘s.a.’ in the earlier mark into account when comparing the signs at issue.

39 In accordance with the settled case-law of the Court of Justice, a distortion of the facts must be obvious from the documents on the Court’s file, without there being any need to carry out a new assessment of the facts and the evidence (judgments in General Motors v Commission, C-551/03 P, EU:C:2006:229, paragraph 54, and Viega v Commission, C-276/11 P, EU:C:2013:163, paragraph 30).



40 That is demonstrably not true of the assessment referred to in paragraph 38 of the present order, by which the General Court did not carry out any distortion which is apparent from the documents on the Court's file; the fourth part of the ground of appeal in actual fact simply seeks, in the present case, to have the Court of Justice substitute its own appraisal of the facts for that carried out by the General Court.

41 The fourth part of the single ground of appeal must therefore be rejected as manifestly unfounded.

*The fifth part of the single ground of appeal*

42 By the fifth part of the single ground of appeal, Argo Group submits that the judgment under appeal is vitiated by a failure to state reasons inasmuch as it is not apparent from that judgment for what reason, other than an erroneous interpretation of the judgment in *Grupo Sada v OHIM — Sadia (GRUPO SADA)*, EU:T:2005:169, the coexistence of the word mark 'ARIS' should not be taken into account.

43 In that regard, it is sufficient to point out that, as has been stated in paragraph 35 of the present order, the General Court, first, concluded after a detailed assessment that the registered word mark ARIS is different from the figurative marks at issue and, secondly, held that the evidence provided by Argo Group does nothing to indicate the presence on the European Union market of the sign in respect of which registration is sought and fails to give any indication of how the relevant public has been exposed to the marks at issue on that market.

44 In so doing, the General Court set out to the requisite legal standard the reasons why it considered that there was no need to take the alleged coexistence of that word mark into account in the present case.

45 The fact that the General Court arrived at a different conclusion from the appellant cannot in itself vitiate the judgment under appeal for failure to state reasons (see, to that effect, judgment in *Gogos v Commission*, C-583/08 P, EU:C:2010:287, paragraph 35).

46 In view of the foregoing considerations, the fifth part of the single ground of appeal must be rejected as manifestly unfounded.

47 It follows from all of the foregoing that the appeal must be dismissed as, in part, manifestly inadmissible and, in part, manifestly unfounded.

## **Costs**

48 Under Article 137 of the Rules of Procedure, applicable to the procedure on appeal pursuant to Article 184(1) of those rules, a decision as to costs is to be given in the order which closes the proceedings.

49 As the present order has been adopted prior to notification of the appeal to the defendant at first instance and, therefore, before the latter has incurred costs, it is appropriate to decide that the appellant must bear its own costs.

On those grounds, the Court (Ninth Chamber) hereby orders:

- 1. The appeal is dismissed.**
  
- 2. Argo Group International Holdings Ltd shall bear its own costs.**

[Signatures]