

Court of Justice EU, 26 July 2017, Meica v EUIPO

EU word mark "MINI WINI"

v



TRADE MARK LAW

General Court made no error in law by holding that the Board of Appeal was fully entitled - after a global assessment - to conclude that there was no likelihood of confusion between the marks at issue

- The Court observes in that regard that a likelihood of confusion must be assessed globally, taking into account all factors relevant to the circumstances of the case, and that that global assessment implies some interdependence between the factors taken into account (order of 17 September 2015, Arnoldo Mondadori Editore v OHIM, C-548/14 P, not published, EU:C:2015:624, paragraph 45).

25. Thus, contrary to what is argued by Meica, the occurrence in combination of the factors mentioned in paragraph 23 of this judgment — which are present to a certain level and degree — in no way entails a presumption that there is a likelihood of confusion. Meica has therefore not succeeded in showing, by its argument, that the General Court made any error of law whatsoever when, following a global assessment of the likelihood of confusion, it held, in paragraph 80 of the judgment under appeal, that the Fourth Board of Appeal of EUIPO had been fully entitled to conclude that there was no likelihood of confusion for the purposes of Article 8(1)(b) of Regulation No 207/2009.

Other grounds of appeal are manifestly unfounded because they concern factual assessments of the General Court or are otherwise unfounded

69. Therefore, inasmuch as Meica, by the first and second arguments of the fifth part of the first ground of appeal, is challenging that analysis, its arguments must be rejected as manifestly inadmissible. The same is true of the third argument raised in the fifth part.

- Whilst purporting to argue that the facts have been distorted, Meica is in fact merely asking the Court to carry out an alternative assessment of the facts, which does not fall within the jurisdiction of the Court in an appeal.

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Court of Justice EU, 26 July 2017

(E. Regan, President of the Chamber, A. Arabadjiev (Rapporteur) and C.G. Fernlund)

JUDGMENT OF THE COURT (Sixth Chamber)

26 July 2017 (*)

(Appeal — EU trade mark — Figurative trade mark containing the word element ‘STICK MiniMINI Beretta’ — Opposition by the proprietor of the EU word mark Mini Wini — Rejection of the opposition by the Board of Appeal of the European Union Intellectual Property Office (EUIPO) — Regulation (EC) No 207/2009 — Article 8(1)(b) — Likelihood of confusion — Level of attention of the relevant public — Independent distinctive role — Dominance — Criteria for assessing visual similarity — Obligation to state reasons)

In Case C-182/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 March 2016,

Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG, established in Edewecht (Germany), represented by S. Labesius, Rechtsanwalt, appellant,

the other parties to the proceedings being:

European Union Intellectual Property Office (EUIPO), represented by M. Rajh, acting as Agent, defendant at first instance,

Salumificio Fratelli Beretta SpA, established in Barzanò (Italy), represented by G. Ghisletti, F. Braga and P. Pozzi, avvocati,

intervener at first instance,

THE COURT (Sixth Chamber),

composed of E. Regan, President of the Chamber, A. Arabadjiev (Rapporteur) and C.G. Fernlund, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1. By its appeal, Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG (‘Meica’) seeks to have set aside the judgment of the General Court of the European Union of 4 February 2016, Meica v OHIM — Salumificio Fratelli Beretta (STICK MiniMINI Beretta) (T-247/14, ‘the judgment under appeal’, EU:T:2016:64), in so far as, by that judgment, the General Court dismissed in part Meica’s claim for annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 14 February 2014 (Case R 1159/2013-4; ‘the decision at issue’) relating to opposition proceedings between Meica and Salumificio Fratelli Beretta SpA (‘Fratelli Beretta’).

Background to the dispute

2. On 22 June 2011 Fratelli Beretta filed an application for registration of an EU trade mark with EUIPO

pursuant to Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1).

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



4. The goods and services in respect of which registration was sought are in, inter alia, Classes 29 and 43 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 ('the Nice Agreement'), and correspond to the following descriptions:

- Class 29: 'Meat, poultry and game'; and
- Class 43: 'Services for providing food and drink'.

5. The EU trade mark application was published in Community Trade Marks Bulletin No 2011/139 of 26 July 2011.

6. On 24 October 2011, Meica filed a notice of opposition pursuant to Article 41 of Regulation No 207/2009 to registration of the mark applied for in respect of the goods and services referred to in paragraph 4 of this judgment.

7. The opposition was based on the earlier EU word mark Mini Wini, filed on 31 July 2003 and registered on 2 March 2005 under reference number 3297835.

8. The goods covered by the earlier mark on which the opposition was based are in, inter alia, Class 29 of the Nice Agreement and correspond to the following description: *'Meat products and charcuterie, meat and sausage preserves, fish, poultry and game, all in ready-to-eat, preserved, marinated and frozen form; meat extracts; jellies, meat jellies; preserved prepared meals, mainly consisting of vegetables and/or meat and/or mushrooms and/or charcuterie and/or pulses and/or potatoes and/or sauerkraut and/or fruits; vegetable and mushroom preserves, ready-to-cook soups, ready-to-eat soups; vegetable paste; canned food, snacks, including suitable for the microwave; ready-to-cook and ready-to-eat prepared meals, including suitable for the microwave, mainly containing meat products and charcuterie, fish, poultry and game, mushrooms, vegetables, pulses, potatoes and/or sauerkraut; hot dogs; charcuterie in pastry cases; salads'*.

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

10. By decision of 30 April 2013, the Opposition Division of EUIPO partially upheld the opposition in respect of, inter alia, the goods 'meat, poultry and game' in Class 29 of the Nice Agreement. First, it

considered that there was a likelihood of confusion between the marks at issue in respect of the product 'sausages', the only product for which Meica had, in its view, proved genuine use of its mark. Secondly, as regards the services in Class 43 of the Nice Agreement, it rejected the opposition because those services and the product for which use of the mark had been proved were not similar.

11. On 21 June 2013, Fratelli Beretta filed a notice of appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009, against the decision of the Opposition Division.

12. By the decision at issue, the Fourth Board of Appeal of EUIPO annulled the Opposition Division's decision of 13 April 2013 in its entirety.

13. In the first place, the Fourth Board of Appeal of EUIPO declared inadmissible Meica's submissions seeking a decision altering the Opposition Division's decision of 30 April 2013 in respect of the services in Class 43 of the Nice Agreement, on the ground that they widened the scope of the appeal and did not satisfy the conditions laid down in Article 60 of Regulation No 207/2009. In the second place, it found, with regard to the goods in Class 29 of the Nice Agreement, that there was no likelihood of confusion between the marks at issue on the part of the relevant public, within the meaning of Article 8(1)(b) of Regulation No 207/2009, given that, inter alia, their similarity was confined to the descriptive element 'mini'.

The proceedings before the General Court and the judgment under appeal

14. By application lodged at the Registry of the General Court on 17 April 2014, Meica brought an action for annulment of the decision at issue.

15. In support of its action, Meica raised two pleas in law alleging (i) infringement of Article 8(3) of Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OJ 1996 L 28, p. 11), as amended by Commission Regulation (EC) No 2082/2004 of 6 December 2004 (OJ 2004 L 360, p. 8), and (ii) infringement of Article 8(1)(b) of Regulation No 207/2009.

16. By the judgment under appeal the General Court (i) upheld Meica's first plea in law and annulled the decision at issue in so far as that decision rejected Meica's submissions seeking a decision altering the Opposition Division's decision of 30 April 2013 in respect of the services in Class 43 of the Nice Agreement and (ii) dismissed the remainder of the action.

Forms of order sought by the parties

17. Meica claims that the Court should:

- set aside the judgment under appeal in so far as, by that judgment, the General Court dismissed in part its claim for annulment of the decision at issue, and annul the decision at issue in its entirety;
- in the alternative, set aside the judgment under appeal in so far as, by that judgment, the General Court dismissed in part its claim for annulment of the

decision at issue, and refer the case back to the General Court for it to rule on that claim; and

– order EUIPO and Fratelli Beretta to pay the costs of the proceedings before the General Court and order EUIPO to pay the costs of the proceedings before the Court of Justice.

18. EUIPO and Fratelli Beretta contend that the Court should:

– dismiss the appeal; and
– order Meica to pay the costs.

The appeal

19. Meica raises two grounds in support of its appeal: the first alleges infringement of Article 8(1)(b) of Regulation No 207/2009 and the second alleges infringement of the obligation to state reasons laid down by the second paragraph of Article 296 TFEU.

20. The first ground of appeal has six parts. Given that the second ground of appeal must be examined in conjunction with the third part of the first ground of appeal, the six parts should be considered in turn.

First part of the first ground of appeal

Arguments of the parties

21. By the first part of the first ground of appeal, Meica submits that the General Court erred in law in its application of the legal requirements that must be met for a finding of a likelihood of confusion. It argues that it follows from the case-law of the Court of Justice that if the earlier mark has an average level of distinctiveness, the relevant consumer's level of attention is average and the goods are identical, a low degree of similarity between the signs at issue is sufficient to establish a likelihood of confusion. Thus, the General Court should, in paragraph 80 of the judgment under appeal, have held that the Fourth Board of Appeal of EUIPO had erred in concluding that there was no likelihood of confusion in the present case.

22. EUIPO and Fratelli Beretta submit that the first part of the first ground of appeal should be rejected as unfounded.

Findings of the Court

23. By the first part of its first ground of appeal, Meica maintains, in essence, that a likelihood of confusion automatically arises where there is a combination of the following factors: average distinctiveness of the earlier trade mark, an average level of attention on the part of the relevant public, the fact that the goods concerned are identical and a low degree of similarity between the signs at issue.

24. The Court observes in that regard that a likelihood of confusion must be assessed globally, taking into account all factors relevant to the circumstances of the case, and that that global assessment implies some interdependence between the factors taken into account (order of 17 September 2015, *Arnoldo Mondadori Editore v OHIM*, C-548/14 P, not published, EU:C:2015:624, paragraph 45).

25. Thus, contrary to what is argued by Meica, the occurrence in combination of the factors mentioned in paragraph 23 of this judgment — which are present to a certain level and degree — in no way entails a presumption that there is a likelihood of confusion.

Meica has therefore not succeeded in showing, by its argument, that the General Court made any error of law whatsoever when, following a global assessment of the likelihood of confusion, it held, in paragraph 80 of the judgment under appeal, that the Fourth Board of Appeal of EUIPO had been fully entitled to conclude that there was no likelihood of confusion for the purposes of Article 8(1)(b) of Regulation No 207/2009.

26. It follows from the foregoing considerations that the first part of the first ground of appeal must be rejected as unfounded.

Second part of the first ground of appeal

Arguments of the parties

27. The second part of the first ground of appeal contains three arguments. By the first argument Meica claims that the goods concerned are inexpensive everyday consumer goods and that the General Court did not take account of the fact that the relevant public, when purchasing such goods, will perceive the marks in a predominantly visual manner. Accordingly, given that visual aspects are of particular importance in the assessment of the likelihood of confusion, the General Court should have found there to be a likelihood of confusion despite the low degree of similarity between the marks at issue.

28. By the second argument, Meica submits that the weak distinctive character of the element 'MiniMINI' in the mark applied for cannot eliminate the likelihood of confusion between the marks at issue. Indeed, by comparison with the similarity of the marks, the General Court attached undue importance to that distinctive character. Where the similar elements of a sign have only weak distinctive character, a likelihood of confusion would, in Meica's submission, exist only where the mark for which registration is sought is a complete reproduction of the earlier mark.

29. By the third argument, Meica alleges that the General Court erred in holding that less distinctive elements do not attract the relevant public's attention and that consequently the mark will not be abbreviated by the consumer in such a way that only the 'MiniMINI' element is retained. In fact, in Meica's view, the case-law of the Court of Justice makes clear that less distinctive elements may also attract the relevant public's attention.

30. EUIPO and Fratelli Beretta dispute Meica's arguments.

Findings of the Court

31. It should be recalled at the outset that, whilst the importance to be attached to the visual, phonetic and conceptual similarity between two competing marks may depend on the category of goods or services at issue and on the conditions in which they are marketed, the weighing up of all those factors forms part of the assessment of the facts which the General Court must undertake on a case-by-case basis and in respect of which it alone has jurisdiction (order of 28 January 2016, *Harper Hygienics v OHIM*, C-374/15 P, not published, EU:C:2016:79, paragraph 70).

32. Similarly, the assessment of the perception of the relevant public and the question of the extent to which

elements of the sign concerned are decisive for the overall impression produced by that sign are matters of factual assessment (order of 16 May 2013, *Arav v H.Eich and OHIM*, C-379/12 P, not published, EU:C:2013:317, paragraph 40).

33. Under Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal is limited to points of law. The General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of those facts and the assessment of that evidence thus do not, save where the facts or evidence have been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (order of 16 May 2013, *Arav v H.Eich and OHIM*, C-379/12 P, not published, EU:C:2013:317, paragraph 41).

34. In the present case, it is clear that, with the three arguments it advances in the second part of the first ground of appeal — which purportedly concern errors of law — Meica is in reality seeking to call in question the assessment of the facts undertaken by the General Court in respect of the way in which the relevant public will perceive the visual aspects of the marks at issue and the importance which the General Court gave both to the weak distinctive character of the elements ‘mini’ and ‘MiniMINI’ of the mark applied for and to the ability of the less distinctive elements of that mark to hold the attention of the relevant public.

35. Since it has neither been argued nor shown in the present case that the facts or the evidence were distorted, the second part of the first ground of appeal must be rejected as inadmissible.

Third part of the first ground of appeal and the second ground of appeal

Arguments of the parties

36. By the third part of the first ground of appeal, Meica claims, first, that the General Court should have taken into account a low, rather than an average, level of attention on the part of the public when the goods are inexpensive everyday consumer goods. Secondly, Meica submits that the General Court disregarded the rule established in the case-law that in so far as there is a public with different levels of attention, account must be taken of the public with the lowest level of attention.

37. In addition, Meica, by its second ground of appeal, maintains that the General Court infringed the obligation to state reasons concerning the assessment of the level of attention of the relevant public in view of the fact that the goods at issue are inexpensive everyday consumer goods. In particular, Meica asserts that it had argued both before EUIPO and before the General Court that, as regards inexpensive everyday consumer goods, the relevant public has a low level of attention when purchasing such goods. However, in Meica’s view, the General Court failed to take any account at all of the facts and the case-law supporting its argument.

38. EUIPO and Fratelli Beretta dispute Meica’s arguments.

Findings of the Court

39. By the argument it develops in the third part of the first ground of appeal, Meica seeks to call in question the assessment of the level of attention of the public concerned by the goods in question.

40. Findings of the General Court relating to the characteristics of the relevant public and its degree of attention, perception or attitude are appraisals of fact (order of 21 March 2012, *Fidelio v OHIM*, C-87/11 P, not published, EU:C:2012:154, paragraph 58 and the case-law cited).

41. Therefore, since no allegation of distortion has been made, the first argument put forward in the third part of the first ground of appeal must be rejected as inadmissible.

42. As regards the second argument advanced in the third part of the first ground of appeal, it is common ground that the General Court did not find that the relevant public has different or varying levels of attention with regard to the goods concerned. Accordingly, the General Court did not disregard the rule that it is the lowest level of attention that must be applied.

43. Consequently, the second argument put forward in the third part of the first ground of appeal must be rejected as unfounded.

44. So far as the second ground of appeal is concerned, it must be recalled that, according to settled case-law of the Court of Justice, the duty incumbent upon the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, provided that it enables the persons concerned to understand the grounds of the General Court’s judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal (see, to that effect, [judgment of 17 October 2013, *Isdin v Bial-Portela*, C-597/12 P, EU:C:2013:672](#), paragraph 21).

45. In the present case, it is sufficient to point out that the reasoning set out by the General Court in paragraphs 36 to 39 of the judgment under appeal both enables Meica to understand the reasons why the General Court rejected its argument that the level of attention of the relevant public is low and provides the Court of Justice with sufficient information to exercise its power of review.

46. Indeed, it is clear from paragraph 39 of the judgment under appeal, and in particular from the reference made by the General Court to the finding made by the Fourth Board of Appeal of EUIPO concerning the level of attention of the relevant public, that the General Court concurred with the Board’s finding.

47. Consequently, the second ground of appeal must be rejected as unfounded.

48. It follows that the third part of the first ground of appeal must be rejected as in part unfounded and in part

inadmissible and the second ground of appeal must be rejected as unfounded.

Fourth part of the first ground of appeal

Arguments of the parties

49. By the fourth part of the first ground of appeal, Meica submits that it follows from the [judgment of 6 October 2005, Medion\(C-120/04, EU:C:2005:594\)](#), that, for the purpose of establishing a likelihood of confusion on the basis of the independent distinctive role of one of the elements of the mark applied for, it is sufficient that the goods covered by the two competing marks are identical, that the earlier mark has an average level of distinctiveness, that the additional element, in the present case ‘Beretta’, is clearly perceived as an indicator of the undertaking’s name and that the other element is similar to the earlier sign.

50. As regards the independent distinctive role of the element ‘MiniMINI’, Meica maintains that, in view of the high degree of phonetic and visual similarity and the, at least, medium degree of overall similarity between the earlier mark Mini Wini and the element ‘MiniMINI’, and, in particular, of the fact that the letter ‘M’ may be memorised as an inverted ‘W’, and also in view of the size and position of the element ‘MiniMINI’, the General Court should have recognised that that element has an independent distinctive role within the contested sign. It submits that the element ‘MiniMINI’ can in no way be considered negligible in visual and phonetic terms.

51. In addition, Meica argues that the General Court misinterpreted the legal requirements for recognising an independent distinctive role since it is sufficient in that regard that an element is not negligible, even though it might not be considered dominant.

52. Finally, Meica maintains that the General Court did not state sufficient reasons for the judgment under appeal, since it did not specify the factors which led it to conclude that the element ‘MiniMINI’ did not have an independent distinctive role.

53. EUIPO and Fratelli Beretta dispute Meica’s arguments.

Findings of the Court

54. The Court notes that in points 75 and 76 of its application before the General Court, Meica limited itself to claiming that the goods covered by the marks at issue are identical and that the sign for which registration is sought consists of the juxtaposition of the name Fratelli Beretta and the earlier mark Mini Wini used in practically the same manner. Meica concluded on the basis of those alleged circumstances that the element ‘MiniMINI’ had an independent distinctive role.

55. In paragraph 78 of the judgment under appeal, the General Court rejected that argument finding that, contrary to what was argued by Meica, the sign applied for did not consist of the juxtaposition of the name Fratelli Beretta and the earlier mark used in practically the same manner.

56. It stated that, by contrast with the circumstances obtaining in the case that gave rise to the judgment of 6 October 2005, Medion (C-120/04, EU:C:2005:594),

the contested sign is composed not of a juxtaposition of, on the one hand, the name of the company of the third party and, on the other, the registered mark but rather of figurative elements and a set of textual elements of which the earlier mark — which is not even used in the same way — is only one element.

57. Accordingly, the General Court rejected Meica’s arguments as being based on an incorrect assessment of the facts.

58. The Court observes in that regard that it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, *inter alia*, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion ([judgment of 8 May 2014, Bimbo v OHIM, C-591/12 P, EU:C:2014:305](#), paragraph 34).

59. Therefore, the individual assessment of each sign, as required by the settled case-law of the Court of Justice, must be made in the light of the particular circumstances of the case and thus cannot be regarded as being subject to general presumptions (judgment of 8 May 2014, Bimbo v OHIM, C-591/12 P, EU:C:2014:305, paragraph 36).

60. Consequently, the General Court’s assessment is not vitiated by the errors of law alleged by Meica and the Court rejects as unfounded the argument that, for a finding of a likelihood of confusion to be made on the basis of the independent distinctive role of one element of the mark applied for, it suffices that certain factors be present.

61. Furthermore, the grounds stated for the judgment under appeal enable Meica to understand the reasons why the General Court rejected its argument that the element ‘MiniMINI’ does not have an independent distinctive role and provide the Court of Justice with sufficient information to exercise its power of review; consequently the argument alleging a failure adequately to state the reasons must be rejected as unfounded.

62. In the light of the foregoing, the fourth part of the first ground of appeal must be rejected as unfounded.

Fifth part of the first ground of appeal

Arguments of the parties

63. By the fifth part of the first ground of appeal, Meica submits that the General Court failed to take account of the relevant factors in its assessment of whether the element ‘MiniMINI’ is dominant. It raises three arguments in connection with this part of the first ground of appeal.

64. By its first argument, Meica submits that the General Court erred in law in failing to assess the size and position of the element ‘MiniMINI’ in comparison with all the other elements and, in particular, in failing to mention the very large size and central position of ‘MiniMINI’ within the contested sign. Meica asserts that, even if a word element has to be regarded as purely descriptive, the fact that it is descriptive does not preclude it from being found to be dominant for the

purposes of assessing the similarity of the signs at issue.

65. As regards the second argument, Meica complains that the General Court omitted, when assessing the alleged dominance of the element ‘MiniMINI’, to compare the size of that element with the size of the element ‘Beretta’. Accordingly, the General Court erred in stating that the public’s attention will not be held by an element which is three times larger than the second largest element of the contested sign.

66. By its third argument, Meica maintains that, as a result of that omission, the General Court distorted the facts. Similarly, the General Court failed to take into account the fact that the relevant consumer will read the word elements of the picture mark from the top left-hand corner to the bottom right-hand corner. Consequently, in Meica’s submission, if the General Court had conducted such an assessment, it would have come to the conclusion that ‘MiniMINI’ is the element that will primarily be recognised by the relevant public.

67. EUIPO and Fratelli Beretta dispute Meica’s arguments.

Findings of the Court

68. In paragraphs 51 to 57 of the judgment under appeal the General Court carried out an analysis which found, in essence, that ‘MiniMINI’ is not the dominant element of the mark applied for and that all the elements comprising that mark, and in particular the element ‘Beretta’, contribute to forming the image of that mark which the relevant public keeps in mind and are consequently not negligible. It is clear that that analysis constitutes a factual assessment.

69. Therefore, inasmuch as Meica, by the first and second arguments of the fifth part of the first ground of appeal, is challenging that analysis, its arguments must be rejected as manifestly inadmissible. The same is true of the third argument raised in the fifth part. Whilst purporting to argue that the facts have been distorted, Meica is in fact merely asking the Court to carry out an alternative assessment of the facts, which does not fall within the jurisdiction of the Court in an appeal.

70. It follows that the fifth part of the first ground of appeal must be rejected as being manifestly inadmissible.

Sixth part of the first ground of appeal

Arguments of the parties

71. By the sixth part of the first ground of appeal, Meica complains that the General Court, when assessing the visual similarity of the signs, referred, erroneously, to the conceptual meaning of the element ‘mini’: in Meica’s submission, that is inconsistent with the case-law and may be classified as a distortion of the facts. Meica further submits that the General Court’s alleged error in this regard must also be regarded as a distortion of the analysis carried out by the Fourth Board of Appeal of EUIPO, which also constitutes an error of law.

72. EUIPO and Fratelli Beretta dispute Meica’s arguments.

Findings of the Court

73. By the arguments it makes in the sixth part of the first ground of appeal, Meica in essence complains that the General Court assessed the visual similarity of the signs concerned in terms of the distinctiveness of individual elements of those signs and in terms of their conceptual meaning.

74. In that regard, it is true that the General Court’s analysis, in paragraphs 49 and 50 of the judgment under appeal, examines whether the sign applied for contains a dominant element and, in that context, whether or not the element ‘MiniMINI’ is descriptive.

75. However, that examination was undertaken in the light of the case-law referred to in paragraphs 45 to 48 of the judgment under appeal and therefore followed logically within the General Court’s analytical structure.

76. Moreover, the fact remains that, after making the finding set out in paragraph 52 of the judgment under appeal and setting out a summary of the case-law in paragraph 53 thereof, the General Court, in paragraphs 54 to 59 of the judgment under appeal, carried out a visual assessment of the signs at issue without referring to the conceptual meaning of the element ‘mini’. There is therefore no ground for complaining that the General Court confused the assessment of visual similarity and that of conceptual similarity.

77. Accordingly, that argument must be rejected as unfounded.

78. As to the argument alleging distortion, it suffices to state that, since the General Court’s assessment is not vitiated by the alleged confusion between the concepts of visual similarity and conceptual similarity, that argument is entirely without foundation.

79. That being so, the sixth part of the first ground of appeal must be rejected as unfounded.

Costs

80. Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded the Court is to make a decision as to costs. Under Article 138(1) of those rules, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings.

81. Since EUIPO and Fratelli Beretta have applied for costs to be awarded against Meica and Meica has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by EUIPO and Fratelli Beretta.

On those grounds, the Court (Sixth Chamber) hereby:

- 1.. Dismisses the appeal;
2. Orders Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG to pay the costs.

Regan

Arabadjiev

Fernlund

Delivered in open court in Luxembourg on 26 July 2017.

A. Calot Escobar

Registrar

E. Regan

President of the Sixth Chamber
