

Court of Justice EU, 5 October 2017, Wolf Oil



v

“CHEMPIOIL”

#### TRADEMARK LAW

A distinction should be made between the assessment of the conceptual differences between signs at issue and the overall assessment of their similarities, which form two distinct stages in the analysis of the overall likelihood of confusion, the first being a prerequisite for the second

- In the present case, the General Court correctly distinguished the assessment of the conceptual differences in the analysis of the possible neutralisation of visual and phonetic similarities by conceptual differences.

In paragraphs 39 to 42 of the judgment under appeal, the General Court successively analysed the meaning of the sign ‘champion’ and that of the sign ‘chempioil’ in order to deduce, in essence, in paragraph 43 of that judgment, that the signs at issue were conceptually different. The General Court then applied the case-law cited in paragraphs 43 and 44 of the present judgment in order to assess whether the conditions for the neutralisation of visual and phonetic similarities by the conceptual differences were satisfied. In the present case, the General Court found, in paragraph 47 of the judgment under appeal, that the word ‘champion’ had a clear and specific meaning, whereas the term ‘chempioil’ did not have a clear meaning which could be immediately understood by the public.

47. Secondly, contrary to the appellant’s assertion, the General Court did not hold that the neutralisation of visual and phonetic similarities could be ruled out only if both of the signs at issue had clear and specific meanings. In accordance with the case-law of the Court of Justice on the neutralisation of the similarities referred to in paragraphs 43 and 44 of the present judgment, the General Court examined in paragraph 47 of the judgment under appeal, in a factual assessment, which it is not for the Court of Justice to review, that the sign ‘CHAMPION’ had a clear and specific meaning and that the sign ‘CHEMPIOIL’ had no such meaning, namely that it did not have a meaning which could be immediately understood by the relevant public. Finally, without erring in law, it held that the visual and phonetic similarities of the signs at issue could be neutralised.

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Court of Justice EU, 5 October 2017  
(E. Juhász, K. Jürimäe (Rapporteur) and C. Lycourgos)

JUDGMENT OF THE COURT (Ninth Chamber)  
5 October 2017 (\*)

(Appeal — EU trade mark — Opposition proceedings — International registration designating the European Union — Word mark CHEMPIOIL — Earlier figurative mark CHAMPION — Opposition dismissed)  
In Case C-437/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 4 August 2016,

Wolf Oil Corp., established in Hemiksem (Belgium), represented by P. Maeyaert and J. Muyldermans, advocaten,  
appellant,

the other parties to the proceedings being:

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

SCT Lubricants UAB, established in Klaipėda (Lithuania), represented by S. Labesius, Rechtsanwalt,  
intervener at first instance,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: E. Tanchev,

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, Wolf Oil Corp. seeks to have set aside the judgment of the General Court of the European Union of 1 June 2016, *Wolf Oil v EUIPO — SCT Lubricants (CHEMPIOIL)* (T-34/15, not published, ‘the judgment under appeal’, EU:T:2016:330), by which the General Court dismissed its action for annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 31 October 2014 (Case R 1596/2013-5) relating to opposition proceedings between Wolf Oil Corp. and SCT Lubricants UAB (‘the contested decision’).

#### Legal context

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

“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.”

3. Article 75 of that regulation provides:

“Decisions of [EUIPO] shall state the reasons on which they are based. They shall be based only on

*reasons or evidence on which the parties concerned have had an opportunity to present their comments.”*

4. Article 76(1) of that regulation provides:

*“In proceedings before it, [EUIPO] shall examine the facts of its own motion; however, in proceedings relating to relative grounds for refusal of registration, [EUIPO] shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.”*

#### **Background to the dispute**

5. On 9 March 2011, SCT Lubricants, obtained the international registration designating the European Union of the word mark CHEMPIOIL under number 1 076 327 for goods in Classes 1, 3 and 4 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.

6. On 23 January 2012, the appellant filed a notice of opposition, under Article 42(1) of Regulation No 207/2009, to registration of the mark applied for, for all of the goods covered by it.

7. The opposition was based inter alia on the international registration designating the Union and France of the figurative mark CHAMPION, reproduced below, registered on 12 November 2010 under number 1 059 799 for the goods in Classes 1, 3 and 4 of the Nice Agreement.



8. On 18 July 2013, the Opposition Division upheld the opposition for part of the goods referred to and dismissed it for the other goods for which the registration was sought. In particular, it submitted that, for the first part of the goods referred to, there was a likelihood of confusion between the trade mark applied for and the earlier mark.

9. On 25 September 2013, SCT Lubricants lodged an appeal before EUIPO against the Opposition Division’s decision under Articles 58 to 64 of Regulation No 207/2009.

10. By the contested decision, the Fifth Board of Appeal of EUIPO upheld the appeal, annulled the Opposition Division’s decision in so far as it had upheld the opposition for part of the goods referred to and dismissed it for the other goods. It found, in essence, that there was no likelihood of confusion between the marks at issue because the signs at issue were different. More specifically, it observed that the word ‘champion’, composing the earlier mark, would be understood by most EU consumers, whereas the sign making up the mark sought would not be associated with any concept, except perhaps that of oil. Consequently, despite their visual and phonetic similarities, it found that the relevant public would draw a distinction between the signs at issue. It further found that it had not been demonstrated that the relevant consumers were familiar with the earlier mark,

with the result that no distinctiveness of that mark had been proven.

11. The Board of Appeal also examined the question of whether there was a likelihood of confusion between the mark applied for and the other earlier rights relied on by the appellant, the existence and, where applicable, genuine use of which had been proven. It reached the conclusion that there was also no likelihood of confusion between those rights and the mark applied for.

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

12. By application lodged at the Registry of the General Court on 22 January 2015, the appellant brought an action for the annulment of the contested decision.

13. In support of its action, the appellant relied on two pleas in law alleging, first, infringement of Article 75 and Article 76(1) of Regulation No 207/2009 and, secondly, infringement of Article 8(1)(b) of that regulation.

14. By the judgment under appeal, the General Court dismissed the action. In response to the first plea in law, the General Court found, in essence, that the Board of Appeal had not infringed the appellant’s right to be heard. In response to the second plea in law, the General Court confirmed that there was no likelihood of confusion between the marks at issue because the signs were different.

#### **Forms of order sought by the parties**

15. By its appeal, the appellant claims that the Court should:

- set aside the judgment under appeal;
  - order EUIPO and SCT Lubricants to pay all the costs.
16. EUIPO and SCT Lubricants contend that the appeal should be dismissed and the appellant ordered to pay the costs, respectively, of the appeal in respect of the former and of the proceedings at both instances and of the procedure before the Board of Appeal in respect of the latter.

#### **The appeal**

17. The appellant puts forward two grounds of appeal in support of its appeal. The first ground of appeal alleges a distortion of the evidence and a failure to state reasons, in the context of the examination of the first plea in the action at first instance. The second ground of appeal alleges infringement of Article 8(1)(b) of Regulation No 207/2009, in so far as the General Court erred in its assessment of the likelihood of confusion.

#### **The first ground of appeal**

##### **Arguments of the parties**

18. By its first ground of appeal, the appellant submits, in the first place, that the General Court, by adopting the contradictory reasoning of the Board of Appeal in its assessment of the conceptual similarity between the signs at issue, distorted the evidence that it had provided.

19. It observes, first, that the General Court held, in paragraphs 39 and 45 of the judgment under appeal, that there was, in a large number of languages of the Union, an equivalent of the English and French word ‘champion’ which is pronounced in a very similar way.

According to the appellant, even people who do not speak basic English or French are able to understand the meaning of the earlier mark. The General Court, it claims, incorrectly concluded from this that the word 'champion' has a clear and specific conceptual meaning for the relevant public.

20. Secondly, the appellant criticises the General Court for having held that the contested sign does not convey any clear concept, without taking account of the translations of that word into the other languages of the Union, as it did when determining the meaning of the word 'champion'. The General Court thus contradicted itself by considering, first, that the word 'champion' and its translations into the languages of the Union are similar, even if in some of those languages the letter 'a' is replaced by the letter 'e' and, secondly, that the prefix 'chemp' cannot be understood as an abbreviation of the term 'champion' in the same way as 'champ'.

21. In the second place, the appellant considers that, since the General Court did not reply to its arguments based on the fact that the statement of reasons for the contested decision is contradictory, the judgment under appeal is vitiated by a failure to state reasons.

22. EUIPO considers that that ground of appeal is in part inadmissible, since the appellant does not submit any evidence in support of such a distortion of the facts. As to the substance, EUIPO considers that, in any event, that ground of appeal is unfounded in its entirety.

23. SCT Lubricants contends that the first ground of appeal is manifestly inadmissible, in so far as it has no purpose other than to obtain a fresh re-examination of the factual evidence.

#### **Findings of the Court**

24. In the first place, as regards the appellant's arguments alleging distortion of the evidence, it should be recalled that, according to settled case-law, it follows from Article 256 TFEU, and from the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal lies on points of law only. The General Court thus has exclusive jurisdiction to find and assess the relevant facts and evidence. The appraisal of those facts and evidence does not, therefore, save where they are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (see, inter alia, judgment of 8 November 2016, BSH v EUIPO, C-43/15 P, EU:C:2016:837, paragraph 50 and the case-law cited).

25. It should also be pointed out that, given the exceptional nature of a ground of appeal based on distortion of the evidence, Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 168(1)(d) of the Rules of Procedure of the Court of Justice provide, in particular, that an appellant must indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to that distortion. Such distortion 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

evidence (see, inter alia, [judgment of 17 March 2016, Naazneen Investments v OHIM, C-252/15 P, not published, EU:C:2016:178](#), paragraph 69 and the case-law cited).

26. In the present case, it must be held that the appellant merely criticises the reasoning of the judgment under appeal in so far as the General Court considered that the sign 'CHEMPIOIL' did not convey any clear concept. In so doing, without precisely identifying the evidence which the General Court allegedly distorted, it seeks in effect to obtain from the Court of Justice a new assessment of the conceptual differences between the two signs at issue.

27. The first ground of appeal must therefore be regarded as inadmissible in so far as it alleges a distortion of the evidence.

28. In the second place, as regards the appellant's arguments alleging failure to state reasons, it is common ground that the question whether the grounds of a judgment of the General Court are contradictory or inadequate is a question of law which is amenable to judicial review on appeal (see, inter alia, [judgments of 18 December 2008, Les Éditions Albert René v OHIM, C-16/06 P, EU:C:2008:739](#), paragraph 74 and the case-law cited, and of [5 July 2011, Edwin v OHIM, C-263/09 P, EU:C:2011:452](#), paragraph 63).

29. Thus, contrary to what SCT Lubricants contends, the appellant's first ground of appeal is admissible in so far as it alleges a failure to state reasons.

30. As regards substance, it is apparent from settled case-law that the obligation on the General Court to state reasons does not require it to provide an account which follows exhaustively, one after the other, all the arguments put forward by the parties to the case. It is sufficient that the statement of reasons enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (see, inter alia, to that effect, order of 12 July 2016, Pérez Gutiérrez v Commission, C-604/15 P, not published, EU:C:2016:545, paragraph 27 and the case-law cited).

31. In the present case, the General Court clearly set out, in paragraphs 34 to 45 of the judgment under appeal, the reasons which led it to consider that the signs at issue should be regarded as conceptually different. More specifically, in paragraphs 40 to 42 of that judgment, it considered, in essence, that the word 'champion' was used extensively in various fields of daily life, such as the arts, literature, cinema, music or sport, while the word 'chempioil' did not convey any clear concept and alluded only to oil or chemicals. It pointed out in that regard that it was possible that the word 'chempioil', containing the elements 'oil' and 'chem', could be understood as an abbreviation of 'chemicals'. In paragraph 43 of that judgment, the General Court also stated that it was unlikely that the sign 'CHEMPIOIL' would be perceived as a variant of the mark CHAMPION, since the English abbreviation of the word 'champion' is 'champ' and not 'chemp' or 'chempi'.

32. The first ground of appeal must therefore be regarded as being unfounded in so far as it alleges a failure to state reasons.

33. It follows from the above that the first ground of appeal must be dismissed in its entirety as in part inadmissible and in part unfounded.

#### **The second plea in law**

34. By its second ground of appeal, the appellant alleges that the General Court infringed Article 8(1)(b) of Regulation No 207/2009 in so far as it incorrectly applied the case-law of the Court of Justice on the neutralisation of phonetic and visual similarities by conceptual differences such as those arising, *inter alia*, from the [judgments of 12 January 2006, Ruiz-Picasso and Others v OHIM \(C-361/04 P, EU:C:2006:25\)](#); of [18 December 2008, Les Éditions Albert René v OHIM \(C-16/06 P, EU:C:2008:739\)](#); and of 24 March 2011, *Ferrero v OHIM (C-552/09 P, EU:C:2011:177)*. The General Court, it is claimed, also failed to take account of the actual use of the signs at issue in the market when assessing the overall likelihood of confusion.

35. This ground of appeal may be subdivided into three parts:

#### **The first part of the second ground of appeal**

##### **– Arguments of the parties**

36. The appellant criticises the General Court for having misinterpreted the case-law relating to the neutralisation of visual and phonetic similarities by conceptual differences. It considers that the General Court wrongly held, in paragraph 47 of the judgment under appeal, that such neutralisation could be excluded only if each of the two signs at issue had a clear and specific meaning.

37. The appellant considers, on the contrary, that in order to avoid neutralisation, it is sufficient that the signs at issue have similar meanings, leading a part of the public to establish a semantic link between them. As the two signs allude to the same concept, there is, it claims, conceptual similarity and any neutralisation would be impossible.

38. EUIPO considers that the appellant's arguments must be rejected in so far as they are based on a manifestly erroneous reading of the judgment under appeal.

39. SCT Lubricants contends that that first part of the second ground of appeal is manifestly inadmissible and, in any event, manifestly unfounded.

40. It considers that the application of the case-law on the neutralisation of similarities by conceptual differences is a matter of factual assessment. The appellant does not rely on any distortion of the evidence. SCT Lubricants therefore concludes that that part is manifestly inadmissible because it seeks a re-examination of the facts of the case.

41. In any event, SCT Lubricants observes that the General Court correctly applied the case-law on the neutralisation of visual and phonetic similarities by conceptual differences.

##### **– Findings of the Court**

42. It should be pointed out that, contrary to what SCT Lubricants maintains, the first part of the second ground of appeal concerns a question of law which is based on the alleged failure by the General Court to take account of Article 8(1)(b) of Regulation No 207/2009, as interpreted by the Court of Justice in its case-law on the neutralisation of visual and phonetic similarities. In particular, the Court of Justice is called upon to determine whether the General Court, for the purpose of establishing the neutralisation of similarities of two signs, can simply point out that the earlier sign refers to a clear and immediately apparent concept and that the contested sign does not have a clear meaning which can be immediately perceived by the relevant public.

43. In that regard, it should be recalled that, according to settled case-law, the conceptual differences between two signs at issue may counteract their visual and phonetic similarities, provided that at least one of those signs has a clear and specific meaning for the relevant public, with the result that that public is capable of grasping it immediately (see, *inter alia*, [judgments of 12 January 2006, Ruiz-Picasso and Others v OHIM, C-361/04 P, EU:C:2006:25](#), paragraph 20, and of [23 March 2006, Mülhens v OHIM, C-206/04 P, EU:C:2006:194](#), paragraph 35).

44. According to the case-law of the Court of Justice, the neutralisation of the visual and phonetic similarities of the signs at issue by their conceptual differences is examined when making the overall assessment of the similarity of those signs, which is based on the overall impression given by those signs (see, to that effect, [judgments of 12 January 2006, Ruiz-Picasso and Others v OHIM, C-361/04 P, EU:C:2006:25](#), paragraphs 19 to 21; of [23 March 2006, Mülhens v OHIM, C-206/04 P, EU:C:2006:194](#), paragraphs 34 and 35; and of [15 March 2007, T.I.M.E. ART v OHIM, C-171/06 P, not published, EU:C:2007:171](#), paragraphs 48 and 49). That case-law deals more specifically with the assessment of the degree of conceptual differences which may lead to the neutralisation of visual and phonetic similarities. That analysis must be preceded by a finding of the conceptual differences between the signs at issue (see, to that effect, [judgments of 12 January 2006, Ruiz-Picasso and Others v OHIM, C-361/04 P, EU:C:2006:25](#), paragraphs 22 and 23, and of [18 December 2008, Les Éditions Albert René v OHIM, C-16/06 P, EU:C:2008:739](#), paragraphs 96 to 98).

45. First, it must be observed that the first part of the second ground of appeal is based on a misinterpretation of the case-law cited in paragraph 43 of the present judgment. A distinction should be made between the assessment of the conceptual differences between the signs at issue and the overall assessment of their similarities, which form two distinct stages in the analysis of the overall likelihood of confusion, the first being a prerequisite for the second.

46. In the present case, the General Court correctly distinguished the assessment of the conceptual

differences in the analysis of the possible neutralisation of visual and phonetic similarities by conceptual differences. In paragraphs 39 to 42 of the judgment under appeal, the General Court successively analysed the meaning of the sign ‘champion’ and that of the sign ‘chempioil’ in order to deduce, in essence, in paragraph 43 of that judgment, that the signs at issue were conceptually different. The General Court then applied the case-law cited in paragraphs 43 and 44 of the present judgment in order to assess whether the conditions for the neutralisation of visual and phonetic similarities by the conceptual differences were satisfied. In the present case, the General Court found, in paragraph 47 of the judgment under appeal, that the word ‘champion’ had a clear and specific meaning, whereas the term ‘chempioil’ did not have a clear meaning which could be immediately understood by the public.

47. Secondly, contrary to the appellant’s assertion, the General Court did not hold that the neutralisation of visual and phonetic similarities could be ruled out only if both of the signs at issue had clear and specific meanings. In accordance with the case-law of the Court of Justice on the neutralisation of the similarities referred to in paragraphs 43 and 44 of the present judgment, the General Court examined in paragraph 47 of the judgment under appeal, in a factual assessment, which it is not for the Court of Justice to review, that the sign ‘CHAMPION’ had a clear and specific meaning and that the sign ‘CHEMPIOIL’ had no such meaning, namely that it did not have a meaning which could be immediately understood by the relevant public. Finally, without erring in law, it held that the visual and phonetic similarities of the signs at issue could be neutralised.

48. The first part of the second ground of appeal must therefore be rejected as unfounded.

#### **The second part of the second ground of appeal**

##### **– Arguments of the parties**

49. By the second part of the second ground of appeal, the appellant complains that the General Court implicitly held that a conceptual difference between the signs at issue leads automatically to the conclusion that the signs at issue are dissimilar overall, despite any visual and phonetic similarities. The appellant considers that, in the judgment under appeal, the General Court misinterpreted the case-law on the neutralisation of visual and phonetic similarities by conceptual differences, by failing to balance the conceptual differences found with the clear phonetic and visual similarities, in order to make a global assessment of the similarity of the signs at issue. Furthermore, the General Court should have taken into account, in its assessment of the similarity of the signs at issue, the marketing channels and conditions of the goods at issue.

50. EUIPO contends that this second part of the second ground of appeal is not well founded.

51. SCT Lubricants contends that that second part of the second ground is manifestly inadmissible because it

seeks a review of the factual evidence without demonstrating any distortion of the evidence. That part, it contends, is also manifestly unfounded.

##### **– Findings of the Court**

52. SCT Lubricants’ argument concerning the inadmissibility of the second part of the second ground of appeal must be rejected. Contrary to what SCT Lubricants asserts, that second part concerns a question of law relating to how, in the judgment under appeal, the General Court interpreted the case-law of the Court of Justice concerning the neutralisation of visual and phonetic similarities by the conceptual differences. It must therefore be held that that part is admissible.

53. On the merits, contrary to the appellant’s assertion, the General Court correctly applied Article 8(1)(b) of Regulation No 207/2009, as interpreted by the case-law of the Court of Justice cited in paragraph 43 of the present judgment, and did not consider that the visual and phonetic similarities were automatically neutralised by conceptual differences.

54. On the contrary, the General Court first of all held that, in paragraphs 32 to 45 of the judgment under appeal, that the signs at issue were similar in visual and phonetic terms, but conceptually dissimilar. It then recalled that case-law, in paragraph 46 of that judgment, and applied it to the signs at issue by finding, in paragraph 47 of that judgment, that the sign ‘CHAMPION’ had a clear and specific meaning and that the sign ‘CHEMPIOIL’ had no such meaning or an entirely different meaning.

55. Consequently, the General Court did not err in law when it considered that the Board of Appeal had correctly held, in paragraph 62 of the contested decision, that a consumer would make a distinction between the signs at issue, despite their visual and phonetic similarities.

56. It should be added that the General Court was not required to take account of the marketing channels and the marketing conditions for the goods in question for the purposes of the global assessment of similarities. They may, in fact, vary over time and according to the will of the holders of the trade marks at issue. Consequently, those elements are not appropriate for the purpose of assessing the similarities between the signs (see, to that effect, [judgment of 15 March 2007, T.I.M.E. ART v OHIM, C-171/06 P, not published, EU:C:2007:171](#), paragraph 59).

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

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

##### **– Arguments of the parties**

58. By the third part of its second ground of appeal, the appellant criticises the General Court for failing to take into account, in its assessment of the overall likelihood of confusion, the actual use of the signs at issue on the market and for failing to ascertain whether SCT Lubricants sought to create confusion between those signs.

59. The appellant concludes from the comparison of the uses of the signs at issue on the market for the goods concerned that SCT Lubricants is engaged in a

commercial strategy aimed at creating confusion between the two signs. It nevertheless acknowledges that that argument was not expressly raised in its originating application and that it was only raised during the oral pleadings.

60. SCT Lubricants considers that that part is manifestly inadmissible and, in any event, manifestly unfounded.

**– Findings of the Court**

61. It should be borne in mind that, according to Article 84(1) of the Rules of Procedure of the General Court of 4 March 2015 (OJ 2015 L 105, p. 1), applicable on the date of the hearing, which took place on 26 February 2016, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

62. In the present case, the appellant did not base the ground of appeal which it raised for the first time at the hearing before the General Court on any element of law or of fact disclosed during the proceedings giving rise to the judgment under appeal and itself recognises, in paragraph 59 of its appeal, that the factual evidence on which it relies formed part of the evidence before EUIPO. The General Court was therefore right to refrain from responding to that complaint, which was inadmissible (see, to that effect, order of 4 April 2017, *Sharif University of Technology v Council*, C-385/16 P, not published, EU:C:2017:258, paragraph 41).

63. The third part of the second ground of appeal must therefore be rejected as unfounded.

64. In the light of all of the foregoing, the appeal must be dismissed in its entirety.

**Costs**

65. Under Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to the costs. Under Article 138(1) of those rules, applicable 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.

66. Since EUIPO and SCT Lubricants have applied for costs and the appellant has been unsuccessful, the appellant must be ordered to pay the costs of the appeal.

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

1. Dismisses the appeal;
2. Orders Wolf Oil Corp. to pay the costs.

Juhász

Jürimäe

Lycourgos

Delivered in open court in Luxembourg on 5 October 2017.

A. Calot Escobar

E. Juhász

Registrar

President of the Ninth Chamber

\* Language of the case: English.