

Court of Justice EU, 16 January 2019, Stock Polska v EUIPO



## TRADEMARK LAW

General Court did not fail to appraise the figurative elements of the Lubelska mark for which registration was applied

- On the contrary, it is clear from the face of paragraph 38 of the judgment under appeal that the General Court took account of the figurative elements in appraising the visual similarity of the signs at issue.

General Court sufficiently stated its reasons for the existence of a likelihood of confusion between LUBELSKA and LUBECA to the requisite legal standard:

- General Court implicitly ruled that it considered the figurative elements of the mark applied for were not negligible and the word element was not dominant

In the present case, as regards the first limb of this ground of appeal, it must be found that, although, in paragraphs 38 and 45 of the judgment under appeal, the General Court did not expressly rule on the dominant character of the word element in the mark applied for or, conjunctly, that the figurative elements of that mark were negligible, it does, however, follow, implicitly but necessarily, from the reasons given by the General Court, in particular in paragraph 38 of the judgment under appeal, that it considered that the figurative elements were not negligible and that the word element was not dominant.

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Court of Justice EU, 16 January 2019

(M. Vilaras, J. Malenovský, D. Šváby)

JUDGMENT OF THE COURT (Eighth Chamber)

16 January 2019 (\*)

(Appeal — EU trade mark — Opposition proceedings — Regulation (EC) No 207/2009 —

Article 8(1) — Application for registration of the figurative mark including the word element LUBELSKA — Dominant and distinctive element)

In Case C-162/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 30 March 2017,

Republic of Poland, represented by B. Majczyna, acting as Agent,  
applicant,

the other parties to the proceedings being:

Stock Polska sp. z o.o., established in Warsaw (Poland), represented by T. Gawrylczyk, radca prawny, applicant at first instance,

European Union Intellectual Property Office (EUIPO), represented by M. Rajh and D. Botis, acting as Agents,

defendant at first instance,

Lass & Steffen GmbH Wein- und Spirituosen-Import, established in Lübeck (Germany),

represented by R. Kunz-Hallstein, Rechtsanwalt,

intervener at first instance,

THE COURT (Eighth Chamber),

composed of M. Vilaras, President of the Fourth Chamber, acting as President of the Eighth Chamber,

J. Malenovský and D. Šváby (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

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, the Republic of Poland asks the Court to set aside the judgment of the General Court of the European Union of 19 January 2017, *Stock Polska v EUIPO — Lass & Steffen (LUBELSKA)* (T-701/15, not published, ‘*the judgment under appeal*’, EU:T:2017:16) in so far as by that judgment the General Court dismissed *Stock Polska sp. z o.o.*’s action for annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 September 2015 (Case R 1788/2014-5), relating to opposition proceedings between Lass & Steffen Wein- und Spirituosen-Import (‘Lass & Steffen’) and *Stock Polska* (‘the decision at issue’).

### Legal context

2 Under the heading ‘*Relative grounds for refusal*’, Article 8(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1) states:

‘*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 14 March 2013, *Stock Polska* filed an application for registration of an EU trade mark at EUIPO under Regulation No 207/2009.

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



5 The goods in respect of which registration was sought are in Class 33 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: *'Alcoholic drinks (except beers)'*.

6 On 30 July 2013, Lass & Steffen filed with EUIPO a notice of opposition pursuant to Article 41 of Regulation No 207/2009 to registration of the mark applied for in respect of all of the goods referred to in the application for registration.

7 The opposition was based on the earlier German word mark, Lubeca, registered on 28 January 1985 under No 1073075, for *'Alcoholic beverages (except beers)'*, in Class 33 of the Nice Agreement.

8 By decision of 14 May 2014, the Opposition Division of EUIPO upheld the opposition. It found, in essence, that there was a likelihood of confusion as a result of the identity of the goods concerned and of the similarity of the signs at issue.

9 On 11 July 2014, the applicant filed a notice of appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009. 10 By the decision at issue, the Fifth Board of Appeal of EUIPO dismissed the appeal on 24 September 2015. First, it found that the relevant territory for the assessment of the likelihood of confusion was Germany and that the level of attention of the relevant consumer was average, taking into consideration the nature of the goods in question. Second, it noted that a crown device placed above the verbal component of the sign applied for was not particularly distinctive in the context of alcoholic beverages and inferred from this that the focus of the relevant public would rather be on the verbal components of the signs at issue. Having regard to the significant phonetic and visual similarities between those verbal elements, which were not outweighed by the alleged conceptual differences concerning their meaning in languages other than German, the Board of Appeal found that the signs at issue were similar overall. Taking into account this similarity and the identity of the goods in question, the Board of Appeal confirmed the existence of a likelihood of confusion in the present case.

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

11 By application lodged at the Registry of the General Court on 25 November 2015, Stock Polska brought an action for annulment of the decision at issue, relying on

a single plea in law alleging infringement of Article 8(1)(b) of Regulation No 207/2009.

12 By the judgment under appeal, the General Court dismissed that action.

13 The General Court carried out the comparison of the signs at issue in three parts.

14 In the first place, paragraphs 28 to 35 of the judgment under appeal address the consideration of the figurative elements of the mark applied for.

15 In paragraphs 28 to 30 of the judgment under appeal, the General Court, first, set out the case-law, according to which the global assessment of the likelihood of confusion must be based on the overall impression given by the signs at issue bearing in mind in particular their distinctive and dominant components. It then noted that, for the purpose of assessing the distinctive character of a component making up a mark, an assessment must be made of the greater or lesser capacity of that component to identify the goods or services for which registration of the mark was sought. Lastly, it stated that, when a mark is composed of word and figurative elements, the word element of that mark is, in principle, more distinctive than the figurative element.

16 In paragraphs 33 and 34 of the judgment under appeal, the General Court assessed whether the figurative elements of the mark applied for, namely a crown and curved writing, were liable to influence substantially the overall impression created by the sign applied for. It found that both figurative elements were perceived as essentially decorative and not as an element indicating commercial origin. Furthermore, the General Court stated that a crown is a figurative element commonly used in the alcoholic beverages sector, therefore ruling out, for the same reason, the possibility that the crown might exercise a significant influence on the overall perception of the mark applied for.

17 In paragraph 35 of the judgment under appeal, the General Court held that the Board of Appeal had not erred in taking into account the figurative elements of the mark applied for and that the Board of Appeal was fully entitled to take the view that the word elements of the mark applied for were more distinctive than its figurative elements.

18 In the second place, the General Court assessed the similarity of the signs at issue in paragraphs 37 to 44 of the judgment under appeal. In that regard, in paragraph 37 of the judgment under appeal, it noted that, with regard to the visual, phonetic and conceptual comparison of the signs at issue, the Board of Appeal had referred to the assessment carried out by the Opposition Division, and added, *'for the sake of completeness'*, that it was unlikely that the average German consumer would be aware of the semantic connotations of the word elements *'Lubeca'* and *'lubelska'*.

19 From a visual point of view, the General Court held in paragraph 38 of the judgment under appeal that the dissimilarity relating to the figurative elements and

their different spelling could not prevail over the similarities between the word elements.

20 Phonetically, it took the view, in paragraph 39 of the judgment under appeal, that the word elements of the signs at issue are very similar.

21 Conceptually, the General Court stated, in paragraph 40 of the judgment under appeal, that conceptual difference can counteract the phonetic and visual similarities, provided that at least one of the marks at issue has, from the point of view of the relevant public, a clear and specific meaning. In paragraph 41 of the judgment under appeal, it specified that Stock Polska had not established that at least one of the two word elements at issue has a clear and specific meaning for the average German consumer.

22 As regards the element '*lubelska*', the General Court found, in paragraph 42 of the judgment under appeal, that its meaning alleged by Stock Polska, namely the location of a plant in the Polish city of Lublin (Poland), is derived from the Polish language and thus presupposes some knowledge of that language.

23 With regard to the element '*Lubeca*', in paragraph 43 of the judgment under appeal, the General Court took the view, in essence, that its meaning as the Latin name of the German city of Lübeck, on the assumption that it was established, was not sufficiently clear and precise for the average German consumer. Even if it were acknowledged that the relevant public had some knowledge of Latin, '*Lubeca*' is not a common Latin term the meaning of which is considered to be known by the average German consumer.

24 The General Court held, in paragraph 44 of the judgment under appeal, that the visual and phonetic similarities of the signs at issue were not outweighed by conceptual differences, particularly because, in respect of the goods in question, the phonetic similarity between the marks at issue is, by itself, sufficient to give rise to a likelihood of confusion.

25 In the third place, in its overall assessment of the likelihood of confusion conducted in paragraphs 45 and 46 of the judgment under appeal, the General Court considered that the Board of Appeal was correct in finding a likelihood of confusion between the marks at issue with regard to the origin of the designated goods on the part of average German consumers.

#### **Forms of order sought by the parties before the Court of Justice**

26 The Republic of Poland, supported by Stock Polska, claims that the Court should:

- set aside the judgment under appeal;
- refer the case back to the General Court to be judged again; and
- rule that each party is to bear its own costs.

27 Lass & Steffen contends that the Court should dismiss the appeal.

28 EUIPO contends that the Court should dismiss the appeal and order the appellant to pay the costs.

#### **The appeal**

29 In support of its appeal, the Republic of Poland, supported by Stock Polska, raises four grounds of

appeal, based, in substance, on an infringement of Article 8(1)(b) of Regulation No 207/2009.

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

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

30 The Republic of Poland submits, in essence, that, in failing to carry out a global assessment of the likelihood of confusion based on the overall impression created, having regard to the distinctive and dominant elements, the General Court infringed Article 8(1)(b) of Regulation No 207/2009 in paragraphs 33 to 46 of the judgment under appeal.

31 More particularly, by the first limb of its first ground of appeal, the Republic of Poland criticises the General Court, in paragraphs 33 to 35 of the judgment under appeal, for having failed to have regard to the figurative elements of the composite mark applied for *Lubelska*, namely a crown device depicted above the word element and the curved style of that word element, and, in paragraphs 36 to 44 of the judgment under appeal, for having restricted its assessment of the similarity of the signs to a mere comparison of their word elements, in the present case '*lubelska*' and '*Lubeca*'.

32 By the second limb of its first ground of appeal, the Republic of Poland alleges that, in failing to take into account the dominant character of the word element of the mark applied for *Lubelska* and in finding that the figurative elements of that mark were negligible, namely the crown device and the curved writing, the General Court disregarded Article 8(1)(b) of Regulation No 207/2009.

33 EUIPO contends that this ground of appeal is inadmissible since, under cover of an alleged error of law by the General Court in identifying the dominant elements of the mark for which registration is sought and in its assessment of the likelihood of confusion between the marks in question, the Republic of Poland is, in fact, seeking to call into question the General Court's appraisal of the facts without alleging that they have been distorted.

34 In any event, EUIPO and Lass & Steffen assert that the General Court did not restrict its appraisal of the similarity between the marks merely to their word elements. Thus, they contend that in paragraph 33 of the judgment under appeal the General Court found that the crown device would be perceived by the consumer as decorative, and not as an element indicating the commercial origin of the goods in question.

35 In addition, EUIPO submits that although the General Court did not expressly identify the dominant element in the mark applied for, it did, however, assess the importance of all the elements of the marks in question and did identify both the commonalities and differences in the overall impression of each of those marks. Thus, in paragraph 38 of the judgment under appeal, EUIPO states that the General Court observed that the minor dissimilarity in the word and figurative elements of the marks in question cannot prevail over the similarities between the word elements of the marks.

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



36 As regards the admissibility of the first ground of appeal, 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. Those findings and the appraisal of that evidence do not, therefore, save where they distort the evidence, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 30 May 2018, [Tsujimoto v EUIPO](#), C-85/16 P and C-86/16 P, EU:C:2018:349, paragraph 42).

37 In the present case, it is clear from the arguments developed in support of the first ground of appeal that the Republic of Poland criticises the General Court, in essence, for having failed to have regard to the figurative elements of the Lubelska mark in its appraisal of the similarity between the signs in question, as a result of which it did not carry out a global assessment of the likelihood of confusion based on the overall impression created, having regard to the distinctive and dominant elements of the marks in question.

38 In so doing, this ground of appeal does not call into question the findings of fact made by the General Court, but, in essence, criticises the General Court for an erroneous application of Article 8(1)(b) of Regulation No 207/2009. This ground of appeal therefore raises a question of law relating to the General Court's application of EU law.

39 Accordingly, the ground of appeal is admissible.

40 As regards the merits of this ground of appeal, by its first limb, the Republic of Poland claims that, by failing to have regard to the figurative elements of the Lubelska mark, namely a crown device depicted above the word element and the curved style of that word element, the General Court restricted its assessment of the similarity of the signs to a mere comparison of their word elements.

41 In that regard, it should be noted that, according to settled case-law, the global assessment of likelihood of confusion must, as regards the visual, aural or conceptual similarity of the marks in question, be based on the overall impression created by them, bearing in mind, in particular, their distinctive and dominant components (judgments of [12 June 2007, OHIM v Shaker](#), C-334/05 P, EU:C:2007:333, paragraph 34, and of 3 September 2009, [Aceites del Sur-Coosur/Koipe](#), C-498/07 P, EU:C:2009:503, paragraph 60).

42 More particularly, the Court has held that in the context of examination of the likelihood of confusion, assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole (judgments of 3 September 2009, [Aceites del Sur-Coosur v Koipe](#), C

-498/07 P, EU:C:2009:503, paragraph 61, and of 19 March 2015, [MEGA Brands International v OHIM](#), C-182/14 P, EU:C:2015:187, paragraph 32 and the case-law cited).

43 In the present case, the General Court stated, in paragraph 30 of the judgment under appeal, that, in the case of a composite mark, the word element of that mark is, in principle, more distinctive than the figurative element. In paragraphs 32 to 35 of the judgment under appeal, it then rejected Stock Polska's submission that the figurative elements of the Lubelska mark are not less distinctive than its word element.

44 In paragraph 33 of the judgment under appeal, it took the view that the crown device was not liable substantially to influence the overall impression created by the sign applied for, so that that figurative element would be perceived by the consumer as decorative only, or even laudatory, and not as an element indicating the commercial origin of the goods in question. In addition, it stated that that figurative element is commonly used in the alcoholic beverages sector, which would also rule out the possibility that that element might exercise a significant influence on the overall perception of the mark applied for.

45 As regards the other figurative element, namely the curved writing, in paragraph 34 of the judgment under appeal, the General Court held that that element was not liable to exercise a significant influence on the overall perception of the mark applied for and that the element would be perceived as decorative.

46 In paragraph 35 of the judgment under appeal, the General Court therefore concluded that the Board of Appeal had not erred in taking into account the figurative elements of the mark applied for and that the word element of the mark applied for was more distinctive than its figurative elements.

47 Then, in appraising the visual similarity of the signs at issue, in paragraph 38 of the judgment under appeal, the General Court stated that the dissimilarity between the word elements of the signs at issue *'as well as that resulting from the figurative elements in the sign applied for alone, cannot, ... prevail over the similarities between the word elements at issue referred to above'*.

48 It is clear from the foregoing that, contrary to what the Republic of Poland claims, the General Court did not fail to appraise the figurative elements of the Lubelska mark for which registration was applied. On the contrary, it is clear from the face of paragraph 38 of the judgment under appeal that the General Court took account of the figurative elements in appraising the visual similarity of the signs at issue.

49 Therefore, it must be held that the Republic of Poland's submission that the General Court did not take into account the figurative elements of the mark applied for in appraising the similarity of the signs at issue is based on a misreading of the judgment under appeal. The first limb of the first ground of appeal must therefore be rejected as unfounded.

50 By the second limb of the first ground of appeal, the Republic of Poland claims that the General Court could

have omitted the figurative elements in its appraisal of the similarity of the signs at issue only if it had first identified the dominant character of the word element and found that the figurative elements of the mark applied for were negligible.

51 In so far as it claims in the second limb of this ground of appeal that the General Court failed to appraise the figurative elements of the signs at issue, the Republic of Poland bases its argument on the same misreading of the judgment under appeal as that underlying the first limb of the first ground of appeal. The second limb of the first ground of appeal must therefore be rejected as unfounded.

52 Accordingly, the first ground of appeal must be dismissed in its entirety as unfounded.

### **The second ground of appeal**

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

53 By its second ground of appeal, the Republic of Poland, supported by Stock Polska, claims that the General Court infringed the principles of equal treatment, legal certainty and sound administration in failing to take into account the fact that EUIPO did not apply its previous decision-making practice, as set out in the EUIPO guidelines.

54 It submits that it follows from the judgment of 10 March 2011, [Agencja Wydawnicza Technopol v OHIM](#) (C-51/10 P, EU:C:2011:139), that EUIPO must, when examining an application for registration of an EU trade mark, take into account the decisions already taken and its guidelines. Those decisions and guidelines preclude the Board of Appeal from assessing the dominant character of an element of an EU trade mark indirectly. The approach taken by the Board of Appeal, that is to say, concluding that a particular element has weak distinctive character and then disregarding it in the global assessment, is thus precluded. Lastly, according to the judgment cited, it is possible to deviate from previous decision-making practice and the EUIPO guidelines only where specific circumstances exist, which are lacking, in the present case.

55 Lass & Steffen takes the view that the second ground of appeal amounts to a new plea, in that Stock Polska did not claim before the General Court that EUIPO had violated the principles of equal treatment, legal certainty and sound administration. Therefore, Lass & Steffen submits that the second ground of appeal must be dismissed as inadmissible.

56 EUIPO submits that this ground of appeal must be dismissed as unfounded on the ground that the EUIPO guidelines are merely a set of consolidated rules setting out the line of conduct which EUIPO proposes to adopt.

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

57 As regards the objection of inadmissibility raised by Lass & Steffen, it should be noted that, by its second ground of appeal, the Republic of Poland does not criticise EUIPO, as Lass & Steffen wrongly claims, but the General Court for infringements of the principles of equal treatment, legal certainty and sound administration. Accordingly, in so far as this ground of

appeal is based, in essence, on an error of law allegedly on the part of the General Court, it is admissible.

58 As regards the merits of this ground of appeal, it must be found that the submissions made by the Republic of Poland start from the erroneous premiss that the General Court, in upholding the decision at issue, endorsed an alleged failure of EUIPO to take into account the figurative elements of the mark applied for. As is clear from paragraph 49 above, EUIPO took those elements into account in appraising the similarity of the mark applied for and the earlier mark.

59 In any event, it is settled case-law that the EUIPO guidelines are not binding legal acts for the purpose of interpreting provisions of EU law and that the legality of the decisions of the Boards of Appeal of EUIPO must be assessed solely on the basis of Regulation No 207/2009 as interpreted by the EU judiciary and not on the basis of a decision-making practice previous to those guidelines. A decision concerning the registration of an EU trade mark which the Board of Appeal may take under Regulation No 207/2009 falls within the scope of circumscribed powers and is not a matter of discretion (judgments of 26 April 2007, [Alcon v OHIM](#), C-412/05 P, EU:C:2007:252, paragraph 65, and of 19 December 2012, [Leno Merken](#), C-149/11, EU:C:2012:816, paragraph 48, and order of 14 April 2016, [KS Sports v EUIPO](#), C-480/15 P, not published, EU:C:2016:266, paragraph 36).

60 In addition, although EUIPO must take into account decisions already taken and consider with especial care whether it should decide in the same way or not, compliance with the principle of legality requires that the examination of any trade mark application be stringent and full and be undertaken in each individual case, since the registration of a sign as a mark depends on specific criteria, which are applicable in the factual circumstances of the particular case (see, to that effect, judgment of 10 March 2011, [Agencja Wydawnicza Technopol v OHIM](#), C-51/10 P, EU:C:2011:139, paragraphs 73 to 77).

61 The second ground of appeal must therefore be dismissed as unfounded.

### **The third ground of appeal**

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

62 The third ground of appeal alleges distortion of the facts and is comprised of two limbs.

63 By the first limb of the third ground of appeal, the Republic of Poland criticises the General Court for failing, in paragraph 33 of the judgment under appeal, to recognise as a well-known fact that a crown device is a figurative element commonly used to designate alcoholic beverages.

64 By the second limb of the third ground of appeal, the Republic of Poland considers that, in paragraph 43 of the judgment under appeal, the General Court erred in regarding it as well known that the average German consumer does not know what the Latin word 'Lubeca' means. Such a statement disregards two other well-known facts, namely, first, that the level of familiarity with Latin names of cities is unrelated to the level of familiarity with Latin per se and, second, that

consumers of alcoholic beverages attach considerable importance to the geographical origin of such beverages.

65 In addition, the General Court disregarded another well-known fact, namely that German consumers know of the Latin name '*Lubeca*', in so far as it is generally accessible on the internet, and that a number of companies established in Lübeck use the designation '*Lubeca*' in their company name or trade mark. The Republic of Poland therefore concludes that the findings made in paragraph 43 of the judgment under appeal are erroneous and resulted in compromising the appraisal of the conceptual similarity of the marks in question.

66 In response to the first limb of this ground of appeal, in respect of an alleged distortion of the common use of the crown device in designating alcoholic drinks, EUIPO considers that that limb is inadmissible for the following two reasons. First, at first instance, Stock Polska did not challenge the Board of Appeal's finding that the crown device is a figurative element commonly used in the alcoholic beverages sector. EUIPO takes the view that that limb amounts to a new plea which should be dismissed as inadmissible. Second, EUIPO considers that that finding is one of fact which falls outside the jurisdiction of the Court of Justice in hearing an appeal, unless the evidence has been distorted.

67 EUIPO claims that the second limb of this ground of appeal is inadmissible since determining whether a fact is well known is a finding of fact which falls outside the jurisdiction of the Court of Justice in hearing an appeal, unless the evidence has been distorted. 68 EUIPO and Lass & Steffen consider that no distortion of the evidence has been identified in the present case. The Republic of Poland has not demonstrated any error in paragraph 43 of the judgment under appeal or substantiated its claim that an alcoholic beverage consumer is used to identifying the geographical origin of such drinks by their place of origin in Latin.

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

69 It must be borne in mind that, according to settled case-law, the finding, by the General Court, as to whether facts on which the Board of Appeal of EUIPO based its decision are well known or not is a factual assessment which, save where the facts or evidence are distorted, is not subject to review by the Court of Justice on appeal (judgment of 22 June 2006, [Storck v OHIM](#), C-25/05 P, EU:C:2006:422, paragraph 53; orders of 3 June 2009, [Zipcar v OHIM](#), C-394/08 P, not published, EU:C:2009:334, paragraph 42, and of 3 June 2015, [The Sunrider Corporation v OHIM](#), C-142/14 P, not published, EU:C:2015:371, paragraph 65).

70 It is clear from equally settled case-law that such a 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 (judgment of 3 September 2009, [Papierfabrik August Koehler and Others v Commission](#), C-322/07 P, C-327/07 P and C-

338/07 P, EU:C:2009:500, paragraph 53 and the case-law cited).

71 In addition, given the exceptional nature of a ground alleging distortion of the facts and evidence, Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure of the Court 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 (judgment of 22 September 2016, [Pensa Pharma v EUIPO](#), C-442/15 P, not published, EU:C:2016:720, paragraph 21 and the case-law cited).

72 However, it is not clearly apparent from the case file that there has been a distortion of the facts or of the evidence submitted to the General Court. Furthermore, the Republic of Poland has not indicated precisely which evidence was distorted by the General Court or which mistaken assessments it allegedly made.

73 Having regard to the foregoing considerations, the third ground of appeal must be dismissed.

#### **The fourth plea in law**

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

74 The fourth ground of appeal alleges infringement of the obligation to state reasons and is comprised of two limbs.

75 By the first limb of the fourth ground of appeal, the Republic of Poland, supported by Stock Polska, considers that the General Court did not sufficiently state the reasons for its assessment of the existence of a likelihood of confusion in paragraph 45 of the judgment under appeal by failing to state which element of the sign it considered to be dominant.

76 By the second limb, the Republic of Poland submits that, in paragraph 43 of the judgment under appeal, the General Court did not sufficiently state the reasons for its assessment that the average German consumer would not know the meaning of the Latin word '*Lubeca*'.

77 Lass & Steffens and EUIPO contend that the Court should dismiss this ground of appeal.

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

78 As a preliminary matter, it must be borne in mind that, according to settled case-law, the reasoning of the General Court in a judgment must be disclosed clearly and unequivocally, in such a way as to enable the persons concerned to ascertain the reasons for the decision taken and the Court of Justice to exercise its power of review (see, inter alia, judgment of 6 September 2018, [Bundesverband Souvenir — Geschenke — Ehrenpreise v EUIPO](#), C-488/16 P, EU:C:2018:673, paragraph 63 and the case-law cited).

79 The duty incumbent upon the General Court to state reasons for its judgments does not, however, require it to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. Its reasoning may therefore be implicit, on condition that it enables the persons concerned to know the reasons why that court has not upheld their arguments and that it provides the Court of Justice with

sufficient material for it to exercise its powers of review (see, inter alia, judgment of 19 March 2015, [MEGA Brands International v OHIM](#), C-182/14 P, EU:C:2015:187, paragraph 54).

80 In the present case, as regards the first limb of this ground of appeal, it must be found that, although, in paragraphs 38 and 45 of the judgment under appeal, the General Court did not expressly rule on the dominant character of the word element in the mark applied for or, conjunctly, that the figurative elements of that mark were negligible, it does, however, follow, implicitly but necessarily, from the reasons given by the General Court, in particular in paragraph 38 of the judgment under appeal, that it considered that the figurative elements were not negligible and that the word element was not dominant.

81 In those circumstances, the Court finds that, in paragraph 45 of the judgment under appeal, the General Court sufficiently stated its reasons for the existence of a likelihood of confusion to the requisite legal standard.

82 The first limb of the fourth ground of appeal must therefore be dismissed as unfounded.

83 As regards the second limb of this ground of appeal, it is to be noted that the considerations set out in paragraph 43 of the judgment under appeal, which are findings of fact by the General Court and in respect of which this Court has not found any distortion in its assessment of the third ground of appeal, are sufficient in supporting the General Court's conclusion that the alleged meaning of the Latin word '*Lubeca*' is not sufficiently clear and precise for the average German consumer. The second limb of the fourth ground of appeal must therefore be rejected as unfounded.

84 In the light of the foregoing, the fourth ground of appeal must be dismissed in its entirety as unfounded.

85 Having regard to all of the foregoing considerations, the appeal must be dismissed.

#### **Costs**

86 In accordance with Article 138(1) of the Rules of Procedure of the Court of Justice, 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. Since EUIPO has applied for costs and the Republic of Poland has been unsuccessful, the latter must be ordered to pay the costs.

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

1. Dismisses the appeal;
2. Orders the Republic of Poland to pay the costs.

Vilaras, Malenovský, Šváby

Delivered in open court in Luxembourg on 16 January 2019.

A. Calot Escobar, K. Lenaerts  
Registrar President