

**Appeal brought on 4 April 2018 by Constantin Film Produktion GmbH against the judgment of the General Court (Sixth Chamber) delivered on 24 January 2018 in Case T-69/17, Constantin Film Produktion GmbH v European Union Intellectual Property Office**

**(Case C-240/18 P)**

*Language of the case: German*

**Parties**

*Appellant:* Constantin Film Produktion GmbH (represented by: E. Saarmann and P. Baronikians, Rechtsanwälte)

*Other party to the proceedings:* European Union Intellectual Property Office

**Form of order sought**

The appellant claims that the Court of Justice should:

set aside the judgment of the General Court of 24 January 2018 in Case T-69/17;

order the respondent to pay the costs.

**Grounds of appeal and main arguments**

In support of its appeal the appellant submits three grounds.

**1. Infringement of Article 7(1)(f) of the EU Trade Mark Regulation (EUTMR)**

The General Court of the European Union erred in refusing the EU trade mark application at issue on the basis of the absolute ground for refusal under Article 7(1)(f) of the EUTMR. <sup>1</sup> The sign applied for is not, it is submitted, contrary to accepted principles of morality.

The General Court of the European Union committed the following errors in its examination of the findings made by the Board of Appeal:

The General Court of the European Union examined the sign ‘Fuck you, Goethe’, instead of the specific sign applied for, namely ‘Fack Ju Göhte’.

The General Court of the European Union erred in assuming that the sign applied for was marked by an inherent vulgarity, thereby overlooking the fact that the multi-word sign ‘Fack Ju Göhte’ is an original and distinctive artistic term which, on account of its misspelling, appears humorous and harmless.

The General Court of the European Union erred in law by confirming the Board of Appeal’s determination of the relevant German-speaking public’s perception. The appellant has proved the broad success of the film ‘Fack Ju Göhte’ in the German-speaking part of the European Union and the fact that the relevant public associates the sign applied for with amusement and entertainment. Even the (few) members of the public who have not yet heard of the film cannot possibly feel offended by the sign applied for in respect of the goods and services covered, as the phonetic spelling of the sign by itself deprives it of any seriousness. Furthermore, the sign applied for does not require any action on behalf of the general public, nor does it directly address or insult it.

**2. Infringement of the principle of equal treatment**

By not applying to the present case the findings of the European Union Intellectual Property Office concerning the application for the sign ‘DIE WANDERHURE’ (OHIM decision of 28 May 2015 — R 2889/2014-4 *Die Wanderhure*), the General Court of the European Union arbitrarily treated substantially similar situations in different ways.

### **3. Infringement of the principles of legal certainty and sound administration**

By examining the sign ‘Fuck you, Goethe’ instead of ‘Fack Ju Göhte’ and by not applying the findings of the WANDERHURE decision, the General Court of the European Union took a decision which was unforeseeable and not verifiable.

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<sup>1</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1), as amended (replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1)).