

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

21 March 2019 (*)

(EU trade mark — Invalidity proceedings — EU figurative mark TOBBIA — Earlier EU figurative mark Peppa Pig — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009 (now Article 8(1)(b) and Article 60(1)(a) of Regulation (EU) 2017/1001))

In Case T-777/17,

Xianhao Pan, residing in Rome (Italy), represented by M. Oliva, lawyer,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by D. Walicka and A. Folliard-Monguiral, acting as Agents,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Entertainment One UK Ltd, established in London (United Kingdom), represented by J. Guise, L. Cassidy and N. Rose, Solicitors,

the other party to the proceedings before the Board of Appeal of EUIPO being:

Astley Baker Davies Ltd, established in London,

ACTION brought against the decision of the First Board of Appeal of EUIPO of 14 September 2017 (Case R 1776/2016-1), relating to invalidity proceedings between, on the one hand, Entertainment One UK and Astley Baker Davies, and, on the other hand, Mr Xianhao,

THE GENERAL COURT (Eighth Chamber),

composed of A.M. Collins, President, M. Kancheva and G. De Baere (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Court Registry on 23 November 2017,

having regard to the response of EUIPO lodged at the Court Registry on 11 May 2018,

having regard to the response of the intervener lodged at the Court Registry on 27 April 2018,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

Judgment

Background to the dispute

- 1 On 13 September 2013, the applicant, Mr Xianhao Pan, obtained from the European Union Intellectual Property Office (EUIPO), on the basis of Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union 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)), registration, under the number 11775509, of the following EU figurative trade mark:



- 2 That registration had been applied for on 27 April 2013. The goods in respect of which that mark was registered are in Class 25 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: ‘Clothing, footwear, headgear’.
- 3 On 2 April 2015, the intervener, Entertainment One UK Ltd, and Astley Baker Davies Ltd filed an application for a declaration of invalidity in respect of the contested mark, based, inter alia, on the ground set out in Article 53(1) (a) of Regulation No 207/2009 (now Article 60(1)(a) of Regulation 2017/1001), read in conjunction with Article 8(1)(b) of Regulation No 207/2009 (now Article 8(1)(b) of Regulation 2017/1001).
- 4 In support of that application for a declaration of invalidity, the intervener and Astley Baker Davies relied on the earlier EU figurative mark reproduced below, which was filed on 9 August 2011 and registered on 23 February 2012 under the number 10186261 and covers, inter alia, goods in Class 25 corresponding to the following description: ‘Clothing, footwear, headgear’:



- 5 By decision of 28 July 2016, the Cancellation Division rejected the application for a declaration of invalidity in its entirety.
- 6 On 28 September 2016, the intervener and Astley Baker Davies filed a notice of appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009 (now Articles 66 to 71 of Regulation No 2017/1001), against the decision of the Cancellation Division.
- 7 By decision of 14 September 2017 (‘the contested decision’), the First Board of Appeal of EUIPO upheld the appeal of the intervener and Astley Baker Davies. In particular, it found that the relevant public consisted of the general public in the European Union, that the goods were identical, that the signs at issue were visually similar, that, from a phonetic standpoint, there was a

certain correlation between the first word element in the earlier sign and the contested sign and, lastly, that those signs were conceptually similar to an average degree. The Board of Appeal concluded that, in view of the identity of the goods and the visual and conceptual similarities, the differences between the signs at issue were not sufficient to dispel the existence of a likelihood of confusion. It therefore upheld the application for a declaration of invalidity.

Forms of order sought

8 The applicant claims, in essence, that the Court should:

- annul the contested decision;
- alter the contested decision.

9 EUIPO and the intervener contend that the Court should:

- dismiss the action;
- order the applicant to pay the costs.

Law

10 In support of his action, the applicant relies, in essence, on four pleas in law, alleging (i) infringement of the period for bringing an appeal; (ii) that the documents submitted for the first time before the Board of Appeal are inadmissible; (iii) failure to state the reasons for the contested decision and; (iv) infringement of Article 8(1)(b) of Regulation No 207/2009.

The first plea, alleging infringement of the period for bringing an appeal

11 The applicant alleges that the Board of Appeal did not examine his plea regarding the belated nature of the appeal which the intervener had brought before it. He maintains that the period for bringing the appeal began to run on 28 July 2016, that is to say, as from the notification of the Cancellation Division's decision to the parties, and expired on 28 September 2016. However, he submits that the notice of appeal was filed with EUIPO on 28 November 2016.

12 EUIPO and the intervener dispute that claim.

13 In that regard, it must be pointed out that, under Article 60 of Regulation No 207/2009, notice of appeal must be filed in writing at EUIPO within two months of the date of notification of the decision against which an appeal may

be brought, and a written statement setting out the grounds of appeal must be filed within four months of the date of notification of that decision (see, for example, judgment of 21 May 2014, *Melt Water v OHIM (NUEVA)*, T-61/13, EU:T:2014:265, paragraphs 19 and 31).

- 14 According to Rule 49(1) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1) (now Article 23(1)(a) and (d) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation 2017/1001, and repealing Delegated Regulation (EU) 2017/1430 (OJ 2018 L 104, p. 1), if the appeal does not comply with, inter alia, Article 60 of Regulation No 207/2009, the Board of Appeal is to reject it as inadmissible, unless each deficiency has been remedied before the time limit laid down in that article has expired.
- 15 In the present case, as the Cancellation Division's decision was adopted and notified to the parties on 28 July 2016, the prescribed period for appealing against that decision expired on 28 September 2016. As EUIPO and the intervener correctly point out, it is apparent from the file before the Board of Appeal that EUIPO did indeed receive the intervener's notice of appeal on 28 September 2016. The statement setting out the grounds of appeal was filed on 28 November 2016, that is to say, also within the period provided for by Article 60 of Regulation No 207/2009.
- 16 Furthermore, even though the Board of Appeal did not expressly rule on that point, the fact that it dealt with the appeal brought by the intervener shows that it implicitly, but definitely, regarded the appeal as admissible.
- 17 Consequently, the first plea in law must be rejected.

The second plea, alleging that the documents submitted for the first time before the Board of Appeal are inadmissible

- 18 The applicant submits that the Board of Appeal took into account documents which the intervener had submitted for the first time before it, although those documents were thus inadmissible. Those documents consisted of a communication from the Italian customs authorities and the annexes thereto and a dissertation on the effects of copyright, which, in the applicant's view, constitutes a new argument.
- 19 EUIPO and the intervener dispute that claim.
- 20 Under Article 76(2) of Regulation No 207/2009 (now Article 95(2) of Regulation 2017/1001), EUIPO may disregard facts or evidence which are not submitted in due time by the parties concerned.

- 21 It follows from the wording of that provision that, as a general rule and unless otherwise specified, the submission of facts and evidence by the parties remains possible after the expiry of the time limits to which such submission is subject under the provisions of Regulation No 207/2009, and that EUIPO is in no way prohibited from taking account of facts and evidence which are submitted or produced late (judgments of 13 March 2007, *OHIM v Kaul*, C-29/05 P, EU:C:2007:162, paragraph 42, and of 19 April 2018, *EUIPO v Group*, C-478/16 P, not published, EU:C:2018:268, paragraph 34).
- 22 In stating that EUIPO ‘may’, in such a case, decide to disregard such evidence, Article 76(2) of Regulation No 207/2009 grants EUIPO a broad discretion to decide, while giving reasons for its decision in that regard, whether or not to take it into account (judgments of 13 March 2007, *OHIM v Kaul*, C-29/05 P, EU:C:2007:162, paragraph 43, and of 28 February 2018, *mobile.de v EUIPO*, C-418/16 P, EU:C:2018:128, paragraph 49).
- 23 As regards the exercise of that discretion by EUIPO for the purposes of possibly taking into account evidence which is submitted late, it must be borne in mind that the Court of Justice has held that taking such evidence into account is particularly likely to be justified where EUIPO considers, first, that the material which has been produced late is, on the face of it, likely to be relevant and, secondly, that the stage of the proceedings at which that late submission takes place and the circumstances surrounding it do not argue against such matters being taken into account (see, to that effect, judgments of 13 March 2007, *OHIM v Kaul*, C-29/05 P, EU:C:2007:162, paragraph 44; of 28 February 2018, *mobile.de v EUIPO*, C-418/16 P, EU:C:2018:128, paragraph 63; and of 4 October 2018, *Blackmore v EUIPO — Paice (DEEP PURPLE)*, T-344/16, not published, EU:T:2018:648, paragraph 54).
- 24 In any event, as EUIPO and the intervener correctly point out, the fact remains, first, that the reasons for the contested decision are exclusively based on the comparison between the contested mark and the earlier mark and the resulting likelihood of confusion and, secondly, that it is not apparent from the contested decision that the Board of Appeal actually took the evidence submitted for the first time before it into account. In assessing the likelihood of confusion, the Board of Appeal did not refer to the documents at issue submitted by the intervener. Consequently, that argument is ineffective.
- 25 The second plea in law must therefore be rejected.

The third plea, alleging failure to state the reasons for the contested decision

- 26 The applicant submits that the Board of Appeal failed to state the reasons for the contested decision. He thus maintains that the Board of Appeal did not explain the reason why it adopted a decision that was the opposite of that of the Cancellation Division.
- 27 The first sentence of Article 75 of Regulation No 207/2009 (now the first sentence of Article 94(1) of Regulation 2017/1001), provides that decisions of EUIPO must state the reasons on which they are based. It is settled case-law that that obligation to state reasons has the same scope as that laid down by the second paragraph of Article 296 TFEU and that the statement of reasons required by that article must disclose in a clear and unequivocal manner the reasoning followed by the body which adopted the measure in question. The purpose of the obligation that decisions of EUIPO must state the reasons on which they are based is twofold: first, to enable the persons concerned to ascertain the reasons for the measure so that they can defend their rights and, secondly, to enable the Courts of the European Union to exercise their power to review the legality of those decisions (judgments of 21 October 2004, *KWS Saat v OHIM*, C-447/02 P, EU:C:2004:649, paragraphs 64 and 65, and of 19 April 2018, *Rintisch v EUIPO — Compagnie laitière européenne (PROTICURD)*, T-25/17, not published, EU:T:2018:195, paragraph 34).
- 28 It is apparent from the case-law that the question whether the statement of reasons for a decision satisfies those requirements is a question which must be assessed with reference not only to its wording but also to its context and the whole body of legal rules governing the matter in question (judgments of 28 June 2018, *EUIPO v Puma*, C-564/16 P, EU:C:2018:509, paragraph 65, and of 4 October 2018, *Paice v EUIPO — Blackmore (DEEP PURPLE)*, T-328/16, not published, EU:T:2018:649, paragraph 44).
- 29 The Boards of Appeal cannot, however, be required to provide an account that follows exhaustively and one by one all the lines of reasoning articulated by the parties before them. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know the reasons for the Board of Appeal's decision and provides the competent Court with sufficient material for it to exercise its power of review (judgment of 4 October 2018, *DEEP PURPLE*, T-328/16, not published, EU:T:2018:649, paragraph 45).
- 30 It is sufficient if the Boards of Appeal set out the facts and legal considerations having decisive importance in the context of the decision (see judgment of 30 June 2010, *Matratzen Concord v OHIM — Barranco Schnitzler (MATRATZEN CONCORD)*, T-351/08, not published, EU:T:2010:263, paragraph 18 and the case-law cited; judgment of 26 September 2018, *Puma v EUIPO — Doosan Machine Tools (PUMA)*, T-62/16, EU:T:2018:604, paragraph 83).

31 It follows that the fact that the Board of Appeal did not reproduce all of the arguments of one party, or did not reply to each of those arguments, cannot by itself lead to a finding that the Board of Appeal refused to take them into account (judgments of 9 December 2010, *Tresplain Investments v OHIM — Hoo Hing (Golden Elephant Brand)*, T-303/08, EU:T:2010:505, paragraph 46, and of 9 November 2016, *Smarter Travel Media v EUIPO (SMARTER TRAVEL)*, T-290/15, not published, EU:T:2016:651, paragraph 77).

32 In the present case, as EUIPO and the intervener correctly point out, it was as a result of a clear and exhaustive analysis, in the section ‘Reasons’, that the Board of Appeal was able to conclude that there was a likelihood of confusion. It analysed whether the goods were similar and then whether the signs were similar from the various visual, phonetic and conceptual standpoints before examining whether there was a likelihood of confusion, with the result that the applicant was able to understand the reasons for the decision and the Court has been able to exercise its power of review. In that regard, it must be added that the obligation to state reasons does not, moreover, create an obligation for the Board of Appeal to point out all the incorrect aspects of the first-instance decision and it is sufficient for it to state the reasons on which its own decision is based.

33 If, by his argument that the Board of Appeal of EUIPO dealt with the decision as if it were a first-instance decision, the applicant seeks to dispute the Board of Appeal’s entire re-examination of the case, it must be stated that the Board of Appeal is entitled to carry out such a re-examination under Article 64(1) of Regulation No 207/2009 (now Article 71(1) of Regulation 2017/1001), which provides that the Board of Appeal may exercise any power within the competence of the department which was responsible for the decision which is being appealed (judgments of 7 December 2017, *Coca-Cola v EUIPO — Mitico (Master)*, T-61/16, EU:T:2017:877, paragraph 115, and of 24 April 2018, *VSM v EUIPO (WE KNOW ABRASIVES)*, T-297/17, not published, EU:T:2018:217, paragraph 17). Furthermore, as the intervener and Astley Baker Davies had challenged the Cancellation Division’s decision in its entirety, the Board of Appeal was obliged to re-examine all the aspects of the decision being appealed.

34 It follows from the foregoing that the third plea in law must be rejected.

The fourth plea, alleging infringement of Article 8(1)(b) of Regulation No 207/2009

35 The applicant submits that the Board of Appeal erred, first, in the comparison of the contested mark with the earlier mark and, secondly, in the global assessment of the likelihood of confusion.

- 36 Under Article 53(1)(a) of Regulation No 207/2009, read in conjunction with Article 8(1)(b) thereof, on application by the proprietor of an earlier mark, a registered EU trade mark must be declared invalid 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.
- 37 According to settled case-law, the risk that the public may believe that the goods or services in question come from the same undertaking or from economically linked undertakings constitutes a likelihood of confusion. According to the same case-law, the likelihood of confusion must be assessed globally, according to the relevant public's perception of the signs and goods or services in question and taking into account all factors relevant to the circumstances of the case, in particular the interdependence between the similarity of the signs and that of the goods or services covered (see judgment of 9 July 2003, *Laboratorios RTB v OHIM — Giorgio Beverly Hills (GIORGIO BEVERLY HILLS)*, T-162/01, EU:T:2003:199, paragraphs 30 to 33 and the case-law cited; judgment of 4 October 2018, *Frinsa del Noroeste v EUIPO — Alimentos Friorizados (Alfrisa)* T-820/17, not published, EU:T:2018:647, paragraph 27).
- 38 For the purposes of applying Article 8(1)(b) of Regulation No 207/2009, a likelihood of confusion presupposes both that the marks at issue are identical or similar and that the goods or services which they cover are identical or similar. Those conditions are cumulative (judgments of 20 September 2017, *The Tea Board v EUIPO*, C-673/15 P to C-676/15 P, EU:C:2017:702, paragraph 47, and of 4 October 2018, *Alfrisa*, T-820/17, not published, EU:T:2018:647, paragraph 28).

The relevant public and the comparison of the goods

- 39 It must be pointed out at the outset that the applicant does not dispute the Board of Appeal's assessment that the relevant public consists of the general public in the European Union, the level of attention of which is average. He also does not dispute the assessment that the goods covered by the marks at issue are identical.

The comparison of the signs

- 40 The applicant disputes the Board of Appeal's assessment regarding the similarity of the signs at issue. According to the applicant, the Board of Appeal took into consideration only some aspects of the graphic

representations of the signs at issue, primarily the heads of the animals represented, and did not take into account the signs as a whole.

- 41 According to settled case-law, the global assessment of the likelihood of confusion must, so far as concerns the visual, phonetic or conceptual similarity of the signs at issue, be based on the overall impression given by the signs, bearing in mind, in particular, their distinctive and dominant elements. The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global assessment of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 35 and the case-law cited; judgment of 4 October 2018, *Alfrisa*, T-820/17, not published, EU:T:2018:647, paragraph 29).
- 42 In the first place, from a visual standpoint, the applicant maintains that there are no similarities between the two signs. He submits that the sign Peppa Pig ‘depicts the design of a head resembling a pig whose style follows the elementary perception of a child’, whereas the sign TOBBIA has ‘graphical features that are not elementary but tend to humanize an animal, the tapir’. The applicant contends that the features of the heads and noses of the animals represented in the signs at issue merely correspond to the physical and natural features of those animals and are not identical. The applicant also stresses that the font of the word elements in the signs at issue is different. Lastly, he states that the earlier mark is registered in black and white, whereas the contested mark is in colour.
- 43 First of all, the Board of Appeal gave a detailed description of each of the signs at issue. Secondly, it found that the signs were similar to the extent that they represented an illustration of an anthropomorphic animal, more specifically a pig. It found that the shape of the head and snout were almost identical in both signs, the only difference being that, in the earlier mark, the animal was looking to its left, whereas, in the contested mark it was looking towards its right. Furthermore, it pointed out that the animals had the same shape of head and displayed the same elements in the same way, namely the ears, the eyes, both of which were situated on the same side of the face, the cheeks, represented by a circular shape, the mouth, with the same smiley shape, and the nostrils. However, the Board of Appeal pointed out that the signs also presented some differences, in particular the clothes worn by the animals, the colours of the contested mark and the word elements of the signs.
- 44 It is true that the signs at issue differ in that the figurative element in the sign Peppa Pig is represented in black and white, with a dress, whereas the figurative element in the sign TOBBIA is represented in yellow, blue, red and pink with trousers. Furthermore, it must be noted that the animal in the earlier

mark has a tail, whereas that in the contested mark does not. Lastly, their arms are not arranged in the same way. However, those differences are not capable of outweighing the similarities pointed out in the contested decision.

- 45 Having regard to those similarities and in the light of the principle referred to in paragraph 41 above, that the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details, it must be held that the Board of Appeal was right in finding that the signs at issue are visually similar.
- 46 So far as concerns the applicant's argument that the sign of which the contested mark consists represents a tapir, it must be pointed out that, even if the public were to identify the animal represented as such, the earlier mark would also, in view of the significant similarities in the graphic elements of both signs, be associated with that animal. Consequently, whether the public identifies the graphic elements of the two marks as two pigs or two tapirs in no way alters the assessment of the similarity of the marks.
- 47 In the second place, from a phonetic standpoint, the Board of Appeal found that there was a certain correlation between the element 'peppa' in the earlier sign and the element 'tobbia' in the contested mark, in the sense that both of those elements are disyllabic words containing the repetition of a strong consonant, namely the consonant 'p' in the earlier mark and the consonant 'b' in the contested mark.
- 48 By contrast, the applicant submits that the Board of Appeal erred in finding that there is a certain correlation between the signs by taking into account only the presence of the two consonants 'pp' in the earlier mark and the two consonants 'bb' in the contested mark and failing to carry out an overall assessment.
- 49 However, although there are admittedly differences between the word elements in the marks at issue, in particular inasmuch as the earlier mark begins with the group of letter 'pe' whereas the contested mark begins with the group of letters 'to' and Peppa Pig is a compound noun whereas TOBBIA is not, the Board of Appeal's assessment that there is a certain correlation between the element 'peppa' and the element 'tobbia' is correct in the light of the similarities pointed out in paragraph 47 above and the fact that they end with the letter 'a'. The applicant does not, moreover, put forward any argument which is capable of calling that finding into question.
- 50 Lastly, in the third place, from a conceptual standpoint, the applicant submits that the signs are different: the earlier mark Peppa Pig refers to a female pig whereas the contested mark TOBBIA refers to a male tapir. Furthermore, he stresses that the tapir in the mark TOBBIA is well known to the Italian public

on account of the popularity of the ‘golden tapir’ in the Italian television programme ‘Striscia la Notizia’.

51 The Board of Appeal found that the average consumer would immediately associate the signs at issue with a pig. It found that the head of the animal represented by the marks exhibited elements that the public would associate with that animal, namely the head, snout and nostrils. In that regard, it pointed out that that association would be especially strong in the case of the earlier mark as the relevant public understood the word element ‘pig’. Furthermore, according to the Board of Appeal, it was unlikely that the public would associate the contested mark with a tapir as the tapir is not an animal which is well known to the general public. As regards, lastly, the word elements of both signs, the Board of Appeal found that the public would identify the elements ‘peppa’ and ‘tobbia’ as proper nouns.

52 In the present case, as the Board of Appeal pointed out, the signs at issue are conceptually similar for the relevant public since they both represent a pig. Contrary to what the applicant claims, it is unlikely that the public will associate the mark TOBBIA with a tapir, given that both signs contain various characteristics which the general public will associate with a pig. Furthermore, the applicant’s argument that the tapir depicted by the contested mark is well known to the Italian public cannot suffice to call the contested decision into question, since it has already been established in paragraph 39 above that the relevant public consists of the general public in the European Union, and not only of the Italian public. Lastly, as regards the word element in each of the two marks, it will probably be understood as the first name of the two respective characters.

53 Consequently, the Board of Appeal was right in finding that the signs at issue are conceptually similar to an average degree.

54 In view of the foregoing, the Board of Appeal did not err in finding that the signs at issue are similar.

The global assessment of the likelihood of confusion

55 The applicant maintains that the signs of which the two marks consist are completely different and cannot in any way be the subject of a likelihood of confusion. Furthermore, he submits that the Board of Appeal did not assess the likelihood of confusion globally. The applicant also maintains that the visual similarity between the signs should not, in the present case, be more important than the phonetic and conceptual similarities, because the goods covered by the mark TOBBIA are not sold in self-service shops.

- 56 According to settled case-law, the global assessment of the likelihood of confusion implies some interdependence between the factors taken into account and, in particular, between the similarity of the trade marks and that of the goods or services covered. Accordingly, a low degree of similarity between those goods or services may be offset by a high degree of similarity between the marks, and vice versa (judgments of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 17; of 24 March 2011, *Ferrero v OHIM*, C-552/09 P, EU:C:2011:177, paragraph 65; and of 3 May 2018, *Laboratoires Majorelle v EUIPO — Jardin Majorelle (LABORATOIRES MAJORELLE)*, T-429/17, not published, EU:T:2018:250, paragraph 86).
- 57 It must be stated that the Board of Appeal carried out a global assessment of the relevant factors. It found that, in view of the identity between the goods in Class 25 and the visual and conceptual similarities between the signs, the differences were not sufficient to dispel any likelihood of confusion on the part of the relevant public. It is apparent from the foregoing that the Board of Appeal assessed the likelihood of confusion globally.
- 58 As regards the importance attached to the various similarities, it must, taking into account the specific nature of the clothing sector, be borne in mind that, as regards the articles concerned, namely clothing, footwear and headgear, visual similarity is of particular importance in the global assessment of the likelihood of confusion, since it is acknowledged that, in general, the purchase of clothing involves a visual examination of the marks (see, to that effect, judgment of 7 July 2015, *Alpinestars Research v OHIM — Tung Cho and Wang Yu (A ASTER)*, T-521/13, not published, EU:T:2015:474, paragraph 60 and the case-law cited). That finding is not called into question by the applicant's argument that that case-law is not applicable in the present case on the ground that the goods marketed under the contested mark are not sold in self-service shops. Regardless of whether the sales take place in self-service shops, the purchase of clothing generally involves a prior visual examination of the marks.
- 59 As regards the applicant's argument that the signs are different, it must be pointed out that, as has been stated in paragraph 54 above, the Board of Appeal was right in finding that the signs were similar. Consequently, in the light of the identity of the goods, it was also right in finding that there is a likelihood of confusion. The applicant does not put forward any argument that is capable of calling that finding into question.
- 60 Consequently, the applicant is wrong in claiming that the Board of Appeal erred when carrying out its assessment of the likelihood of confusion and the fourth plea in law must therefore be rejected.

61 In view of all of the foregoing, the action must be dismissed in its entirety, without there being any need to rule on the admissibility of the applicant's second head of claim.

Costs

62 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the forms of order sought by EUIPO and the intervener.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Xianhao Pan to pay the costs.**

Collins

Kancheva

De Baere

Delivered in open court in Luxembourg on 21 March 2019.

E. Coulon

A.M. Collins

Registrar

President