

## European Union

### “Specsavers”

**Council Regulation (EC) No. 207/2009 of 26 February 2009 on the Community Trade Mark, Arts. 9(1)(b) and (c), 15(1), 51(1)(a) – *Specsavers International Healthcare Ltd, Specsavers BV, Specsavers Optical Group Ltd and Specsavers Optical Superstores Ltd v. Asda Stores Ltd***

**Decision of the European Court of Justice (Third Chamber)  
18 July 2013 – Case No. C-252/12**

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1. Article 15(1) and Article 51(1)(a) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the condition of ‘genuine use’, within the meaning of those provisions, may be fulfilled where a Community figurative mark is used only in conjunction with a Community word mark which is superimposed over it, and the combination of those two marks is, furthermore, itself registered as a Community trade mark, to the extent that the differences between the form in which that trade mark is used and that in which it was registered do not change the distinctive character of that trade mark as registered.
2. Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that where a Community trade mark is not registered in colour, but the proprietor has used it extensively in a particular colour or combination of colours with the result that it has become associated in the mind of a significant portion of the public with that colour or combination of colours, the colour or colours which a third party uses in order to represent a sign alleged to infringe that trade mark are relevant in the global assessment of the likelihood of confusion or unfair advantage under that provision.
3. Article 9(1)(b) and (c) of Regulation No 207/2009 must be interpreted as meaning that the fact that the third party making use of a sign which allegedly infringes the registered trade mark is itself associated, in the mind of a significant portion of the public, with the colour or particular combination of colours which it uses for the representation of that sign is relevant to the global assessment of the likelihood of confusion and unfair advantage for the purposes of that provision.

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Official headnotes.

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