

JUSTIITSMINISTEERIUM
TÖÖSTUSOMANDI
APELLATSIOONIKOMISJON

OTSUS nr 1690-o

Tallinnas 24. oktoobril 2017. a.

Tööstusomandi apellatsioonikomisjon, koosseisus Margus Tähepõld (eesistuja), Evelyn Hallika ja Sulev Sulsenberg, vaatas kirjalikus menetluses läbi välismaise juriidilise isiku Pivotal Payments Corporation (esindaja volikirja alusel patendivolinik Martin Jõgi) vaidlustusavalduse kaubamärgi **GLOBALONE + kuju** (rahvusvaheline reg nr 1262754) registreerimise vastu klassides 9, 35, 36, 38 ja 45 Globalone Management Group Limited nimele.

Asjaolud ja menetluse käik

1) 05.12.2016 esitas Pivotal Payments Corporation, 1100 Boul. René-Lévesque West 9th Floor, Montreal, Quebec H3B 4N4, *Kanada* (edaspidi ka *vaidlustaja*) tööstusomandi apellatsioonikomisjonile (edaspidi ka *komisjon*) vaidlustusavalduse, milles vaidlustatakse kaubamärgi **GLOBALONE + kuju** (rahvusvaheline reg nr 1262754) registreerimine klassides 9, 35, 36, 38 ja 45 Globalone Management Group Limited, MDE's Building, 1st Floor, P.O. Box 3169, PMB 257, Road Town, VG1110 Tortola, *Briti Neitsisaared* (edaspidi ka *taotleja*) nimele. Vaidlustusavaldus võeti menetlusse 16.12.2016 nr 1690 all ja eelmenetlejaks määrati Margus Tähepõld.

Eesti Patendiamet on teinud otsuse registreerida kaubamärk GLOBALONE + kuju (rahvusvaheline reg nr 1262754, registreeringu kuupäev 19.12.2014) taotleja nimele klasside 9, 35, 36, 38 ja 45 kaupade ja teenuste tähistamiseks. Teade õiguskaitse andmise otsuse kohta avaldati Eesti Kaubamärgilehes nr 10/2016.

Vaidlustaja Pivotal Payments Corporation on maksete töötlemise teenuste pakkuja, kes osutab teenuseid nii Põhja-Ameerikas kui ka Euroopas.

Vaidlustaja nimel on järgmine Euroopa Liidu kaubamärk:

Reproduktsoon: **GLOBALONE**

Taotluse nr: 013054135

Taotluse kuupäev: 04.07.2014

Kaubad-teenused:

Klass 9 *Electronic payments gateway, for use in making payments by ecommerce, card-not-present, integrated point of sale terminals, virtual terminal and integrated API, credit card and debit card, chip/EMV, mobile applications for processing transactions by use of magnetically encoded card, chip cards, and near field communication cards, credit cards and debit cards; software to which payment applications or other software of Independent Software Vendors can be integrated in order to send financial transactions from a payment terminal for processing, electronic integration, operation and training manuals.*

Klass 16 *Operational and training manuals.*

Klass 36 *Multi-currency (MCP) enabled electronic payments gateway, capable of authorizing bankcard, non-bankcard, debit card, emv card not present and point of sale transactions in a cardholder's chosen local foreign currency, with settlement occurring to the merchant in multiple currencies, one-time and subscription billing options, hosted payment pages, tokenization - secure card storage, intelligent transaction routing; decline transaction salvage, access by virtual terminal (web based) or direct integration via standard API (provided to merchant/partner), web based real time reporting and reconciliation tools.*

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Suur-Ameerika 1
10122 Tallinn

Telefonid:
6208201, 6208276
e-mail: toak@just.ee

Faks:
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Patendiamet on 03.10.2016 avaldatud teatega registreerinud taotleja Globalone Management Group Limited nimele järgmise kaubamärgi (vaidlustusavaldusele on lisatud väljatrükk Patendiameti andmebaasist – lisa 6):



Reproduktsoon:

Rahvusvaheline registreering nr: 1262754

Prioriteet: 25.11.2014 2014739480 RU

Registreeringu kuupäev: 19.12.2014

Kaubad- teenused:

Klass 9 *Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; recording discs; compact discs, dvds and other digital recording media; mechanisms for coin-operated apparatus; calculating machines; fire-extinguishing apparatus; dvd players; 3d spectacles; ticket dispensers; coin-operated musical automata [juke boxes]; answering machines; fire engines; accumulators, electric; accumulators, electric, for vehicles; actinometers; alidades; altimeters; ammeters; anemometers; anodes; antennas; anticathodes; apertometers [optics]; high-frequency apparatus; testing apparatus not for medical purposes; remote control apparatus; electro-dynamic apparatus for the remote control of railway points; electro-dynamic apparatus for the remote control of signals; monitoring apparatus, electric; sound recording apparatus; global positioning system [gps] apparatus; distillation apparatus for scientific purposes; diffraction apparatus [microscopy]; air analysis apparatus; apparatus to check franking; sound transmitting apparatus; apparatus for fermentation [laboratory apparatus]; breathing apparatus for underwater swimming; breathing apparatus, except for artificial respiration; apparatus and installations for the production of x-rays, not for medical purposes; electric apparatus for commutation; intercommunication apparatus; stills for laboratory experiments; projection apparatus; radiological apparatus for industrial purposes; x-ray apparatus not for medical purposes; blueprint apparatus; flashing lights [luminous signals]; stereoscopic apparatus; telephone apparatus; facsimile machines; phototelegraphy apparatus; igniting apparatus, electric, for igniting at a distance; acid hydrometers; salinometers; acidimeters for batteries; aerometers; beacons, luminous; battery jars; barometers; anode batteries; galvanic batteries; batteries for lighting; solar batteries; batteries, electric; balances [steelyards]; betatrons; binoculars; electronic tags for goods; lens hoods; magnetic tape units for computers; fire hose nozzles; encoded identification bracelets, magnetic; safety tarpaulins; signalling buoys; life buoys; marking buoys; directional compasses; vacuum gauges; electrolyzers; variometers; verniers; scales; letter scales; weighbridges; precision balances; levelling staffs [surveying instruments]; camcorders; video baby monitors; video cassettes; video telephones; video screens; viewfinders, photographic; sockets, plugs and other contacts [electric connections]; micrometer screws for optical instruments; viscosimeters; circuit closers; wavemeters; voltmeters; mechanical signs; signs, luminous; switchboxes [electricity]; current rectifiers; gas testing instruments; gasometers [measuring instruments]; galvanometers; hands free kits for phones; heliographic apparatus; hygrometers; hydrometers; weights; peepholes [magnifying lenses] for doors; holograms; plotters; loudspeakers; sounding leads; plumb bobs; range finders; densimeters; densitometers; optical goods; detectors; smoke detectors; counterfeit [false] coin detectors; transparencies [photography]; slide projectors; diaphragms [photography]; dictating machines; dynamometers; light-emitting diodes [led]; floppy disks; sound recording discs; disks, magnetic; optical discs; circular slide rules; disk drives for computers; juke boxes for computers; dna chips; electronic notice boards; bullet-proof waistcoats*

[vests (am.); life jackets; identification threads for electric wires; nose clips for divers and swimmers; locks, electric; bells [warning devices]; alarm bells, electric; electric door bells; signal bells; acoustic conduits; mirrors for inspecting work; road signs, luminous or mechanical; marine depth finders; probes for scientific purposes; buzzers; needles for record players; measures; pressure measuring apparatus; simulators for the steering and control of vehicles; inverters [electricity]; pressure indicators; temperature indicators; incubators for bacteria culture; measuring instruments; cosmographic instruments; mathematical instruments; levelling instruments; instruments containing eyepieces; surveying instruments; azimuth instruments; interfaces for computers; ionization apparatus not for the treatment of air or water; spark-guards; coaxial cables; fibre [fiber (am.)] optic cables; cables, electric; calipers; slide calipers; screw-tapping gauges; calculating machines; pocket calculators; decompression chambers; cinematographic cameras; electronic pens [visual display units]; holders for electric coils; video game cartridges; toner cartridges, unfilled, for printers and photocopiers; memory cards for video game machines; riding helmets; protective helmets; carriers for dark plates [photography]; automated teller machines [atm]; cathodes; spools [photography]; choking coils [impedance]; coils, electric; electromagnetic coils; cinematographic film, exposed; computer keyboards; solenoid valves [electromagnetic switches]; wire connectors [electricity]; encoded key cards; electronic book readers; electronic agendas; push buttons for bells; mouse pads; magnetic encoders; anti-glare visors; collectors, electric; calibrating rings; protective suits for aviators; commutators; compact discs [audio-video]; compact discs; comparators; marine compasses; laptop computers; tablet computers; notebook computers; condensers [capacitors]; contacts, electric; wind socks for indicating wind direction; traffic cones; branch boxes [electricity]; distribution boxes [electricity]; junction boxes [electricity]; battery boxes; cabinets for loudspeakers; diving suits; galena crystals [detectors]; reflecting discs for wear, for the prevention of traffic accidents; covers for electric outlets; logs [measuring instruments]; lasers, not for medical purposes; lactodensimeters; lactometers; vacuum tubes [radio]; darkroom lamps [photography]; thermionic tubes; amplifying tubes; flashlights [photography]; head cleaning tapes [recording]; magnetic tapes; videotapes; surveying chains; fire escapes; rulers [measuring instruments]; slide-rules; contact lenses; correcting lenses [optics]; optical lenses; optical condensers; sounding lines; electricity conduits; measuring spoons; magnifying glasses [optics]; thread counters; magnets; decorative magnets; close-up lenses; crash test dummies; resuscitation mannequins [teaching apparatus]; mouse [computer peripheral]; pressure gauges; divers' masks; solderers' helmets; protective masks; materials for electricity mains [wires, cables]; voting machines; money counting and sorting machines; material testing instruments and machines; furniture especially made for laboratories; megaphones; portable media players; diaphragms [acoustics]; diaphragms for scientific apparatus; metal detectors for industrial or military purposes; metronomes; rules [measuring instruments]; carpenters' rules; dressmakers' measures; mechanisms for counter-operated apparatus; coin-operated mechanisms for television sets; shutter releases [photography]; micrometers; microprocessors; microscopes; microtomes; microphones; modems; lightning conductors [rods]; monitors [computer hardware]; terminals [electricity]; junction sleeves for electric cables; teeth protectors; temperature indicator labels, not for medical purposes; knee-pads for workers; headphones; surveyors' levels; sound recording carriers; optical data media; socks, electrically heated; sheaths for electric cables; identification sheaths for electric wires; weighing machines; punched card machines for offices; life saving apparatus and equipment; shoes for protection against accidents, irradiation and fire; objectives [lenses] [optics]; lenses for astrophotography; egg-candlers; fire extinguishers; electrified fences; limiters [electricity]; clothing for protection against accidents, irradiation and fire; clothing for protection against fire; asbestos clothing for protection against fire; clothing especially made for laboratories; ozonisers [ozonators]; octants; eyepieces; ohmmeters; wrist rests for use with computers; spectacle frames; eyeglass frames; oscillographs; plumb lines; mirrors [optics]; spectacles [optics]; sunglasses; goggles for sports; signalling panels, luminous or mechanical; radio pagers; pince-nez; electronic pocket translators; transmitters [telecommunication]; telephone transmitters; transmitters of electronic signals; switches, electric; periscopes; gloves for divers; gloves for protection against accidents; gloves for protection against x-rays for industrial purposes; asbestos gloves for protection against accidents; furnaces for laboratory use; pipettes; pyrometers; planimeters; plane tables [surveying instruments]; plates for batteries;

wafers for integrated circuits; printed circuit boards; compact disc players; cassette players; sound recording strips; x-ray films, exposed; films, exposed; life-saving rafts; laboratory trays; semi-conductors; polarimeters; fire pumps; measuring glassware; life belts; fuses; circuit breakers; converters, electric; telerupters; food analysis apparatus; diagnostic apparatus, not for medical purposes; distance recording apparatus; distance measuring apparatus; speed measuring apparatus [photography]; appliances for measuring the thickness of leather; apparatus for measuring the thickness of skins; speed checking apparatus for vehicles; teaching apparatus; time recording apparatus; apparatus and instruments for astronomy; surveying apparatus and instruments; weighing apparatus and instruments; nautical apparatus and instruments; navigational instruments; optical apparatus and instruments; apparatus and instruments for physics; chemistry apparatus and instruments; measuring apparatus; measuring devices, electric; boiler control instruments; meteorological instruments; naval signalling apparatus; observation instruments; navigation apparatus for vehicles [on-board computers]; satellite navigational apparatus; regulating apparatus, electric; precision measuring apparatus; audio- and video-receivers; prisms [optics]; printers for use with computers; hemline markers; retorts' stands; apparatus for changing record player needles; drainers for use in photography; cleaning apparatus for sound recording discs; fire beaters; sighting telescopes for firearms; test tubes; pressure indicator plugs for valves; magnetic wires; telegraph wires; telephone wires; wires, electric; conductors, electric; copper wire, insulated; fuse wire; computer game software; record players; rods for water diviners; distribution consoles [electricity]; control panels [electricity]; radar apparatus; masts for wireless aerials; transmitting sets [telecommunication]; radios; vehicle radios; sprinkler systems for fire protection; frames for photographic transparencies; screens for photoengraving; walkie-talkies; voltage surge protectors; voltage regulators for vehicles; stage lighting regulators; light dimmers [regulators], electric; speed regulators for record players; cell switches [electricity]; washing trays [photography]; marking gauges [joinery]; time switches, automatic; relays, electric; safety restraints, other than for vehicle seats and sports equipment; x-ray photographs, other than for medical purposes; rheostats; respirators for filtering air; respiratory masks, other than for artificial respiration; retorts; refractometers; refractors; grids for batteries; speaking tubes; horns for loudspeakers; saccharometers; optical fibers [fibres] [light conducting filaments]; traffic-light apparatus [signalling devices]; dog whistles; signalling whistles; sextants; inductors [electricity]; safety nets; nets for protection against accidents; fire alarms; signals, luminous or mechanical; sirens; scanners [data processing equipment]; smartphones; connections for electric lines; couplings, electric; connectors [electricity]; sonars; sound locating instruments; lighting ballasts; resistances, electric; spectrograph apparatus; spectroscopes; speed indicators; alcoholmeters; satellites for scientific purposes; protection devices for personal use against accidents; audiovisual teaching apparatus; radiotelegraphy sets; radiotelephony sets; spectacle lenses; anti-glare glasses; optical glass; personal stereos; stereoscopes; stands for photographic apparatus; stroboscopes; fire boats; sulfitemeters; bags adapted for laptops; drying racks [photography]; spherometers; integrated circuits; printed circuits; counters; parking meters; kilometer recorders for vehicles; revolution counters; abacuses; egg timers [sandglasses]; taximeters; ear plugs for divers; tachometers; television apparatus; telegraphs [apparatus]; telescopes; teleprompters; teleprinters; portable telephones; theodolites; thermometers, not for medical purposes; thermostats; thermostats for vehicles; crucibles [laboratory]; tone arms for record players; totalizators; transistors [electronic]; transponders; protractors [measuring instruments]; transformers [electricity]; step-up transformers; vehicle breakdown warning triangles; triodes; starter cables for motors; discharge tubes, electric, other than for lighting; capillary tubes; neon signs; pitot tubes; x-ray tubes not for medical purposes; telephone receivers; gauges; quantity indicators; automatic indicators of low pressure in vehicle tires [tyres]; gasoline gauges; water level indicators; electric loss indicators; light-emitting electronic pointers; slope indicators; levels [instruments for determining the horizontal]; mercury levels; spirit levels; urinometers; amplifiers; particle accelerators; electric installations for the remote control of industrial operations; baby monitors; steering apparatus, automatic, for vehicles; balancing apparatus; video recorders; sound reproduction apparatus; invoicing machines; tape recorders; protection devices against x-rays, not for medical purposes; railway traffic safety appliances; oxygen transvasing apparatus; theft prevention installations, electric; film cutting apparatus; drying

apparatus for photographic prints; optical character readers; centering apparatus for photographic transparencies; dosage dispensers; battery chargers; chargers for electric batteries; acoustic [sound] alarms; sounding apparatus and machines; editing appliances for cinematographic films; cathodic anti-corrosion apparatus; couplers [data processing equipment]; anti-theft warning apparatus; computer peripheral devices; anti-interference devices [electricity]; demagnetizing apparatus for magnetic tapes; acoustic couplers; alarms; fog signals, non-explosive; whistle alarms; adding machines; readers [data processing equipment]; heat regulating apparatus; photocopiers [photographic, electrostatic, thermic]; bar code readers; downloadable ring tones for mobile phones; downloadable image files; downloadable music files; animated cartoons; filters [photography]; filters for respiratory masks; filters for ultraviolet rays, for photography; usb flash drives; magic lanterns; optical lamps; signal lanterns; cameras [photography]; glazing apparatus for photographic prints; shutters [photography]; darkrooms [photography]; photometers; flash-bulbs [photography]; digital photo frames; enlarging apparatus [photography]; photovoltaic cells; containers for contact lenses; spectacle cases; pince-nez cases; containers for microscope slides; cases especially made for photographic apparatus and instruments; chromatography apparatus for laboratory use; chronographs [time recording apparatus]; laboratory centrifuges; eyeglass chains; cyclotrons; compasses [measuring instruments]; frequency meters; time clocks [time recording devices]; petri dishes; sleeves for laptops; fire blankets; chips [integrated circuits]; jigs [measuring instruments]; pedometers; meteorological balloons; electrified rails for mounting spot lights; asbestos screens for firemen; fire hose; protective helmets for sports; cell phone straps; eyeglass cords; tripods for cameras; switchboards; distribution boards [electricity]; screens [photography]; workmen's protective face-shields; projection screens; radiology screens for industrial purposes; fluorescent screens; exposure meters [light meters]; ducts [electricity]; galvanic cells; epidiascopes; ergometers; armatures [electricity].

Klass 35 *Advertising; business management; business administration; office functions; arranging subscriptions to telecommunication services for others; import-export agencies; commercial information agencies; advertising agencies; cost price analysis; rental of advertising space; business auditing; employment agencies; computerized file management; book-keeping; invoicing; demonstration of goods; transcription of communications [office functions]; opinion polling; marketing studies; business information; commercial information and advice for consumers [consumer advice shop]; business investigations; business research; marketing research; personnel recruitment; business management and organization consultancy; business organization consultancy; business management consultancy; personnel management consultancy; professional business consultancy; layout services for advertising purposes; marketing; business management of performing artists; business management of sports people; news clipping services; updating of advertising material; updating and maintenance of data in computer databases; word processing; organization of exhibitions for commercial or advertising purposes; arranging newspaper subscriptions for others; organization of fashion shows for promotional purposes; organization of trade fairs for commercial or advertising purposes; shop window dressing; business appraisals; payroll preparation; data search in computer files for others; sponsorship search; business management assistance; commercial or industrial management assistance; commercial intermediation services; provision of commercial and business contact information; providing business information via a web site; presentation of goods on communication media, for retail purposes; economic forecasting; auctioneering; retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; sales promotion for others; production of advertising films; office machines and equipment rental; rental of advertising time on communication media; publicity material rental; rental of vending machines; rental of sales stands; rental of photocopying machines; publication of publicity texts; radio advertising; bill-posting; distribution of samples; dissemination of advertising matter; direct mail advertising; writing of publicity texts; on-line advertising on a computer network; advertising by mail order; television advertising; document reproduction; compilation of statistics; compilation of information into computer databases; business inquiries; systemization of information into computer databases; advisory services for business management; negotiation and conclusion of commercial transactions for third parties; tax preparation; drawing up of statements of accounts; telemarketing*

services; psychological testing for the selection of personnel; business management of hotels; business management for freelance service providers; commercial administration of the licensing of the goods and services of others; business project management services for construction projects; administrative processing of purchase orders; public relations; modelling for advertising or sales promotion; typing; relocation services for businesses; search engine optimization; web site traffic optimization; price comparison services; pay per click advertising; secretarial services; procurement services for others [purchasing goods and services for other businesses]; shorthand; outsourcing services [business assistance]; telephone answering for unavailable subscribers; photocopying services; business efficiency expert services.

Klass 36 *Insurance; real estate affairs; credit bureaux; debt collection agencies; real estate agencies; financial analysis; renting of apartments; leasing of real estate; rental of offices [real estate]; leasing of farms; lease-purchase financing; savings bank services; accommodation bureaux [apartments]; rent collection; issuing of travellers' checks [cheques]; issue of tokens of value; capital investment; insurance information; insurance consultancy; debt advisory services; stock exchange quotations; lending against security; business liquidation services, financial; brokerage; financial management; factoring; organization of collections; arranging finance for construction projects; antique appraisal; jewellery [jewelry (am.)] appraisal; financial evaluation of standing timber; stamp appraisal; real estate appraisal; numismatic appraisal; art appraisal; financial evaluation of wool; financial evaluation [insurance, banking, real estate]; repair costs evaluation [financial appraisal]; electronic funds transfer; surety services; securities brokerage; real estate brokers; brokerage of carbon credits; insurance brokerage; loans [financing]; pawnbrokerage; check [cheque] verification; charitable fund raising; financial sponsorship; mortgage banking; instalment loans; insurance underwriting; life insurance underwriting; health insurance underwriting; accident insurance underwriting; marine insurance underwriting; fire insurance underwriting; apartment house management; real estate management; actuarial services; banking; stock brokerage services; retirement payment services; trusteeship; provident fund services; customs brokerage; mutual funds; safe deposit services; deposits of valuables; fiscal assessments.*

Klass 38 *Telecommunications; news agencies; wireless broadcasting; television broadcasting; cable television broadcasting; electronic bulletin board services [telecommunications services]; information about telecommunication; providing user access to global computer networks; providing access to databases; providing internet chatrooms; providing telecommunications connections to a global computer network; providing telecommunication channels for teleshopping services; transmission of greeting cards online; message sending; computer aided transmission of messages and images; transmission of telegrams; transmission of digital files; electronic mail; providing online forums; videoconferencing services; rental of message sending apparatus; rental of access time to global computer networks; rental of modems; rental of telecommunication equipment; rental of telephones; rental of facsimile apparatus; radio broadcasting; communications by fiber [fibre] optic networks; cellular telephone communication; communications by computer terminals; satellite transmission; communications by telegrams; communications by telephone; facsimile transmission; paging services [radio, telephone or other means of electronic communication]; teleconferencing services; telex services; voice mail services; telecommunications routing and junction services; telegraph services; telephone services.*


Klass 45 *Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals; marriage agencies; detective agencies; night guards; adoption agency services; arbitration services; rental of safes; embalming services; undertaking; lost property return; releasing doves for special occasions; genealogical research; legal research; security consultancy; intellectual property consultancy; monitoring intellectual property rights for legal advisory purposes; monitoring of burglar and security alarms; crematorium services; licensing of intellectual property; licensing of computer software [legal services]; organization of religious meetings; opening of security locks; guards; planning and arranging of wedding ceremonies; missing person investigations; litigation services; baby sitting; pet sitting; baggage inspection for security purposes; inspection of factories for safety purposes; evening dress rental; rental of fire extinguishers; clothing rental; rental of fire alarms; registration of domain names [legal*

services]; personal background investigations; fire-fighting; escorting in society [chaperoning]; horoscope casting; copyright management; dating services; alternative dispute resolution services; house sitting; mediation; funerals; on-line social networking services; personal body guarding.

Vaidlustaja, olles varasema kaubamärgi GLOBALONE omanik, ei ole andnud taotlejale luba kaubamärgi GLOBALONE + kuju registreerimiseks.

Kaubamärgiseaduse (edaspidi ka *KaMS*) § 10 lg 1 p 2 kohaselt ei saa õiguskaitset kaubamärk, mis on identne või sarnane varasema kaubamärgiga, mis on saanud õiguskaitse identsete või samaliigiliste kaupade või teenuste tähistamiseks, kui on tõenäoline kaubamärkide äravahetamine tarbija poolt, sealhulgas kaubamärgi assotsieerumine varasema kaubamärgiga.

Vaidlustaja kaubamärgitaotlus on esitatud 04.07.2014. Taotleja kaubamärgi prioriteedikuupäev pärineb 25.11.2014 ning registreeringu kuupäev 19.12.2014. Taotleja õigus on vaidlustaja kaubamärgist seega hilisem.

Vaidlustaja kaubamärk koosneb üksnes sõnast GLOBALONE. Taotleja kaubamärk koosneb sõnast **GLOBALONE** ning sellele lisatud kujundelemendist . Mõlema osapoole kaubamärki eristab seega esmajoones sõna GLOBALONE. Eeltoodust tulenevalt leiab vaidlustaja, et tema ja taotleja kaubamärgid visuaalselt äärmiselt sarnased ning foneetiliselt ja semantiliselt identsed.

Vaidlustaja kaubamärgiga tähistatakse klasside 9 ja 16 kaupu ning klassi 36 teenuseid. Taotleja kaubamärgiga tähistatakse klassi 9 kaupu ning klasside 35, 36, 38 ja 45 teenuseid. Mainitud kaubad ja teenused on vaidlustaja hinnangul identsed ning sarnased.

Euroopa Kohtu kohaselt eksisteerib äravahetamise tõenäosus, kui tarbijad võivad käsitada eri kaubamärkidega tähistatud tooteid samalt või majanduslikult seotud isikutelt pärinevatena (29.09.1998 otsus asjas C-39/97 Canon, p 29).

Tarbijatel on seejuures harva võimalust võrrelda kaubamärke külj-külje kõrval, nad peavad usaldama oma ebatäpset mälu pilti varasemalt nähtud märkidest (eelmainitud Euroopa Kohtu 22.06.1999 otsus asjas C-342/97 Lloyd Schuhfabrik Meyer, p 25). Kehtib ka põhimõte, et mida sarnasemad on kaubamärgid, seda erinevamad peavad olema nende kaubad ja teenused (Canon, p 17).

Arvestades kaubamärkide GLOBALONE ja GLOBALONE + kuju kõrget sarnasuse astet ning nendega tähistatavate kaupade ja teenuste identsust ja sarnasust, võib keskmine tarbija ekslikult leida, et:

- taotleja kaubamärgiga GLOBALONE + kuju tähistatav kaup või teenus pärineb vaidlustajalt, varasema kaubamärgi GLOBALONE omanikult,
- taotleja kaubamärgiga GLOBALONE + kuju tähistatav kaup on valmistatud või teenust pakub vaidlustajaga seotud firma, nt tütarettevõtte,
- taotleja kaubamärgiga GLOBALONE + kuju tähistatava kauba või teenuse kvaliteet on tagatud vaidlustaja, varasema kaubamärgi GLOBALONE omaniku poolt.

Vaidlustaja hinnangul võib keskmine tarbija seega leida, et kaubamärkide GLOBALONE ja GLOBALONE + kuju kaubad või teenused pärinevad samalt isikult või et nende omanike vahel on äriline seos. Selles seisnebki *KaMS* § 10 lg 1 p 2 äravahetamise ja assotsieerumise tõenäosus.

Kaubamärgi GLOBALONE + kuju ja selle klassi 9 kaupade ning klasside 35, 36, 38 ja 45 teenuste osas esineb *KaMS* § 10 lg 1 p 2 sätestatud õiguskaitse andmist välistav asjaolu.

Vaidlustaja leiab, et arvestades kaubamärkide sõnaliste osade GLOBALONE identsust ning taotleja kaubamärgi kujundelemendi iseseisva eristusvõime puudumist, võib apellatsioonikomisjon *iura novit curia* põhimõttest tulenevalt rakendada identsete kaupade-teenuste osas ka *KaMS* § 10 lg 1 p 1.

KaMS § 10 lg 1 p 3 kohaselt ei saa õiguskaitset kaubamärk, mis on identne või sarnane varasema registreeritud või registreerimiseks esitatud kaubamärgi või valdavale enamusele Eesti elanikkonnast tuntud kaubamärgiga, millel on õiguskaitse teist liiki kaupade või teenuste tähistamiseks, kui hilisema kaubamärgiga võidakse ebaausalt ära kasutada või kahjustada varasema kaubamärgi mainet või eristusvõimet, mis oli omandatud hilisema kaubamärgi registreerimise taotluse esitamise kuupäevaks või prioriteedikuupäevaks.

Vastavalt ülaltoodule on taotleja õigus kaubamärgile GLOBALONE + kuju hilisem vaidlustaja õigusest kaubamärgile GLOBALONE.

Vastavalt ülaltoodule leidis vaidlustaja, et osapoolte kaubamärgid on visuaalselt äärmiselt sarnased ning foneetiliselt ja semantiliselt identsed.

Erialases praktikas on tõdetud KaMS § 10 lg 1 p 3 rakendatavust nii identsete/samaliigiliste kui ka eriliigiliste kaupade-teenuste osas. Seda toetab ka õigusteoreetiline seisukoht – kui õiguskord kaitseb kaubamärki selle maine ja/või eristusvõime kahjustamise ja/või ärakasutamise eest eriliigiliste kaupade-teenuste osas, siis peab kaitse olema tagatud ka identsete/sarnaste kaupade-teenuste osas. Ehk KaMS § 10 lg 1 p 3 on kohaldatav nii juhul, kui apellatsioonikomisjon peab kaubamärkide GLOBALONE ja GLOBALONE + kuju kaupu-teenuseid identseteks/ samaliigilisteks, kui ka juhul, kui neid peetakse osaliselt või terviklikult eriliigilisteks.

Taotleja kaubamärgi GLOBALONE + kuju kasutamine võimaldab taotlejal säästa uue ja eristusvõimelise kaubamärgi väljatöötamise arvelt aega ja raha, kasutades seejuures ära varasema kaubamärgi eristusvõimelise ja hea mainega kuvandit. Kui pakutavate GLOBALONE + kuju kaupade-teenuste kvaliteet ei vasta seejuures vaidlustaja kaupade-teenuste kvaliteedile, võidakse varasema GLOBALONE kaubamärgi eristusvõimet ja head mainet ka kahjustada.

Vaidlustaja leiab, et kaubamärgi GLOBALONE + kuju ja selle klassi 9 kaupade ning klasside 35, 36, 38 ja 45 teenuste osas esineb KaMS § 10 lg 1 p 3 sätestatud õiguskaitse andmist välistav asjaolu.

Vaidlustaja kaubamärk GLOBALONE on varasem taotleja kaubamärgist GLOBALONE + kuju. Kaubamärgid on visuaalselt väga sarnased ning foneetiliselt ja semantiliselt identsed. Nendega tähistatakse identseid ja samaliigilisi kaupu-teenuseid ning nende äravahetamine ja assotsieerumine on tõenäoline (KaMS § 10 lg 1 p 2). Lisaks sellele võib hilisema GLOBALONE + kuju kaubamärgi kasutamine kahjustada ja/või ära kasutada varasema GLOBALONE kaubamärgi head mainet ja/või eristusvõimet, seda nii identsete/samaliigiliste kui ka eriliigiliste kaupade-teenuste osas (KaMS § 10 lg 1 p 2).

Kõigele eeltoodule tuginedes, lähtudes KaMS §-dest 10 ja 41, tööstusomandi õiguskorralduse aluste seaduse (edaspidi ka TÕAS) §-dest 39, 43 ja 44 ning viidatud Euroopa Kohtu praktikast, palub vaidlustaja apellatsioonikomisjonil tühistada Patendiameti otsus registreerida kaubamärk GLOBALONE + kuju (rahvusvaheline registreering nr 1262754) klassi 9 kaupade ja klasside 35, 36, 38 ja 45 teenuste osas Globalone Management Group Limited nimele ning kohustada Patendiametit jätkama menetlust apellatsioonikomisjoni otsuses toodud asjaolusid arvestades.

2) Komisjon edastas 16.12.2016 vaidlustusavalduse Patendiametile, palvega teavitada taotlejat vaidlustusavaldusest ja määrata endale esindaja hiljemalt 16.03.2017. Taotleja ei ole endale tähtjaks esindajat nimetanud ega kasutanud oma õigust menetluses osaleda.

3) Vaidlustaja esitas 29.05.2017 oma lõplikud seisukohad, milles jäi oma varasemalt esitatud seisukohtade juurde.

4) Komisjon alustas 11.08.2017 asjas 1690 lõppmenetlust.

Komisjoni seisukohad

Komisjon, hinnanud menetluses esitatud seisukohti ja esitatud tõendeid, leiab järgmist.

Taotleja ei ole endale esindajat nimetanud, menetluses aktiivselt osalemise õigust kasutanud ega vaidlustaja seisukohtadele vastuväiteid esitanud. Ei saa eeldada, et taotleja, kes kogu komisjoni menetluse jooksul ei ole esitanud ühtegi vastuargumenti vaidlustaja seisukohtadele, üldse soovib neile vastu vaielda. Tulenevalt TÕAS § 51 lg-st 4 ja § 54¹ lg-st 5 ei ole see, et taotleja ei ole vaidlustusavaldusele vastanud ega esitanud komisjonile vaidlustusavalduse kohta seisukohti, käesolevas asjas otsuse tegemist takistavaks asjaoluks.

Vaidlustaja leiab, et kaubamärgi GLOBALONE + kuju registreerimine taotleja nimele klassi 9 kaupade ja klasside 35, 36, 38 ja 45 teenuste osas on vastuolus KaMS § 10 lg 1 punktidega 2 ja 3.

KaMS § 10 lg 1 p 2 kohaselt ei saa õiguskaitset kaubamärk, mis on identne või sarnane varasema kaubamärgiga, mis on saanud õiguskaitse identsete või samaliigiliste kaupade või teenuste tähistamiseks, kui on tõenäoline kaubamärkide äravahetamine tarbija poolt, sealhulgas kaubamärgi assotsieerumine varasema kaubamärgiga.

KaMS § 10 lg 1 p 3 kohaselt *ei saa õiguskaitset kaubamärk, mis on identne või sarnane varasema registreeritud või registreerimiseks esitatud kaubamärgi või valdavale enamusele Eesti elanikkonnast tuntud kaubamärgiga, millel on õiguskaitse teist liiki kaupade või teenuste tähistamiseks, kui hilisema kaubamärgiga võidakse ebaausalt ära kasutada või kahjustada varasema kaubamärgi mainet või eristusvõimet, mis oli omandatud hilisema kaubamärgi registreerimise taotluse esitamise kuupäevaks või prioriteedikuupäevaks.*

Vaidlustaja on vastandanud talle kuuluva Ühenduse kaubamärgi GLOBALONE (nr 013054135), taotluse kuupäev 04.07.2014, millel on õiguskaitse klasside 9 ja 16 kaupade ja klassi 36 teenuste osas. Vaidlustatud kaubamärgi GLOBALONE + kuju (RV reg nr 1262754) rahvusvahelise registreeringu kuupäev on 19.12.2014. Seega on vaidlustaja Ühenduse kaubamärk taotleja kaubamärgist varasem.

Kaubamärkide äravahetamise tõenäosuse hindamisel tuleb arvesse võtta kõiki tegureid, mis on asjakohased juhtumi asjaoludega. Üldine hinnang kaubamärkide visuaalse, foneetilise ja kontseptuaalse sarnasuse üle peab tuginema kaubamärkide üldmuljele, arvestades nende eristavaid ja domineerivaid komponente.

Komisjon nõustub vaidlustajaga selles, et vastandatud kaubamärkide domineerivaks ja eristusvõimeliseks osaks on märkide identne sõnaline element GLOBALONE. Käesoleva vaidluse objektiks oleva kombineeritud kaubamärgi kujunduses kasutatav kujundelement ei ole nii meeldejääv, et tarbija võiks kaubamärkide eristamisel hakata sellest lähtuma.

Komisjon nõustub ka vaidlustusavalduses toodud muude argumentidega võrreldavate kaubamärkide, kaupade ja teenuste sarnasuse kohta ja sellega, et vaidlustusavalduses toodud asjaoludel võivad tarbijad võrreldavaid kaubamärke segamini ajada KaMS § 10 lg 1 p 2 mõttes või et taotleja kaubamärgiga võidakse ära kasutada varasema kaubamärgi mainet ja eristusvõimet KaMS § 10 lg 1 p 3 mõttes. Komisjon ei pea vajalikuks vaidlustaja põhjendusi korrata. Taotleja ei ole komisjonile esitanud vaidlustaja põhjendusi ümberlukkavaid või kahtluse alla seadvaid seisukohti ega tõendeid.

Käesolevas asjas ei ole tuvastatud asjaolusid, mis välistaksid vaidlustusavalduse rahuldamata jätmise vaatamata asjaolule, et taotleja ei ole vaidlustusavaldusele vastuväiteid esitanud. Lähtudes kõigest eeltoodust kuulub vaidlustusavaldus rahuldamisele.

Tulenevalt eeltoodust, võttes aluseks TÕAS § 61 lg-d 1 ja 2, KaMS § 10 lg 1 p-d 2 ja 3 ning § 41 lg 3, komisjon

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vaidlustusavaldus rahuldada, tühistada Patendiameti otsus kaubamärgi GLOBALONE + kuju” (RV reg nr 1262754) registreerimise kohta Globalone Management Group Limited nimele ning kohustada Patendiametit jätkama menetlust komisjoni otsuses toodud asjaolusid arvestades.

Vaidlustusavalduse menetlusosaline, keda ei rahulda komisjoni otsus ja kes soovib jätkata vaidlust menetlusosaliste vahel hagimenetluse korras, võib esitada hagi teise menetlusosalise vastu kaubamärgi õiguskaitset välistava asjaolu või selle puudumise kindlakstegemiseks kolme kuu jooksul apellatsioonikomisjoni otsuse avaldamisest arvates. Hageja teavitab viivitamata komisjoni hagi esitamisest.

Kui hagi ei ole esitatud, jõustub komisjoni otsus kolme kuu möödumisel otsuse avaldamisest ja kuulub täitmisele.

Kui hagi esitatakse, kuid kohus ei võta hagi menetluse, jätab hagi läbi vaatamata või lõpetab menetluse otsust tegemata, jõustub komisjoni otsus vastava kohtumääruse jõustumise hetkest, kui kohtumäärusest ei tulene teisiti.

Allkirjad:

M. Tähepõld

E. Hallika

S. Sulsenberg