Judgment of the Court (Grand Chamber) of 29 June 2010 — European Commission v Grand Duchy of Luxembourg

(Case C-526/08) [1]

(Failure of a Member State to fulfil obligations — Admissibility — Non bis in idem — Res judicata — Articles 226 EC and 228 EC — Article 29 of the Rules of Procedure — Language of the case — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Non-compliance of national measures with the rules relating to the periods, conditions and techniques of land application of fertiliser — Minimum storage capacity for liquid manure — Prohibition on land application on steeply sloping ground — Techniques ensuring a uniform and effective land application of fertiliser)

(2010/C 234/14)

Language of the case: French

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán, N. von Lingen and B. Smulders, acting as Agents)

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, acting as Agent, and P. Kinsch, avocat)

Re:

Failure to fulfil obligations — Failure to adopt the laws, regulations and administrative provisions necessary to comply fully and properly with Articles 4 and 5, in conjunction with Annex II A(1) and Annex III 1(1), Annex II A(5) and Annex III 1(2), Annex II A(2) and Annex II A(6) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1) — Procedures, conditions and periods of land application of fertilisers — Minimum manure storage capacity — Prohibition of land application on steeply sloping grounds — Techniques for ensuring uniform and efficient land application of fertilisers

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 4 and 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, in conjunction with Annex II A(1), (2), (5) and (6), and Annex III(1)(1) and (2) thereto, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

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[1] OJ C 44, 21.2.2009.

Judgment of the Court (First Chamber) of 8 July 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Portakabin Ltd, Portakabin B.V. v Primakabin B.V.

(Case C-558/08) [1]

(Trade marks — Keyword advertising on the internet — Directive 89/104/EEC — Articles 5 to 7 — Display of advertisements on the basis of a keyword identical with a trade mark — Display of advertisements on the basis of keywords reproducing a trade mark with 'minor spelling mistakes' — Advertising for second-hand goods — Goods manufactured and placed on the market by the proprietor of the trade mark — Exhaustion of the rights conferred by the trade mark — Affixing of labels bearing the name of the reseller and removal of labels bearing the trade mark — Advertising, on the basis of another person's trade mark, for second-hand goods including, in addition to goods manufactured by the proprietor of the trade mark, goods from another source)

(2010/C 234/15)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: Portakabin Ltd, Portakabin B.V.

Defendant: Primakabin B.V.

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 5(1)(a), 5(5), 6(1)(b) and (c) and 7 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Right of the proprietor of a trade mark to oppose unlawful use of his trade mark — Use — Concept — Use of the trade mark as a search term for the purpose of carrying out, via a search engine, an internet search for goods covered by that mark — Display of a link to the website of a reseller of goods covered by the trade mark

Operative part of the judgment

1. *Article 5(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, must be interpreted as meaning that a trade mark proprietor is entitled to prohibit an advertiser from advertising, on the basis of a keyword identical with, or similar to, that mark, which that advertiser has selected for an internet referencing service without the consent of the proprietor, in relation to goods or services identical to those in respect of which the mark is registered, where that advertising does not enable average internet users, or enables them only with difficulty, to ascertain whether the goods or services referred to by the ad originate from the proprietor of the trade mark or from an undertaking economically linked to it or, on the contrary, originate from a third party.*

2. *Article 6 of Directive 89/104, as amended by the Agreement on the European Economic Area of 2 May 1992, must be interpreted as meaning that, where use by advertisers of signs identical with, or similar to, trade marks as keywords for an internet referencing service is liable to be prohibited pursuant to Article 5 of that directive, those advertisers cannot, in general, rely on the exception provided for in Article 6(1) in order to avoid such a prohibition. It is, however, for the national court to determine, in the light of the particular circumstances of the case, whether or not there was, in fact, a use, within the terms of Article 6(1), which could be regarded as having been made in accordance with honest practices in industrial or commercial matters.*

3. *Article 7 of Directive 89/104, as amended by the Agreement on the European Economic Area of 2 May 1992, must be interpreted as meaning that a trade mark proprietor is not entitled to prohibit an advertiser from advertising — on the basis of a sign identical with, or similar to, that trade mark, which that advertiser chose as a keyword for an internet referencing service without the consent of that proprietor — the resale of goods manufactured and placed on the market in the European Economic Area by that proprietor or with his consent, unless there is a legitimate reason, within the meaning of Article 7(2), which justifies him opposing that advertising, such as use of that sign which gives the impression that the reseller and the trade mark proprietor are economically linked or use which is seriously detrimental to the reputation of the mark.*

The national court, which must assess whether or not there is such a legitimate reason in the case before it:

— *cannot find that the ad gives the impression that the reseller and the trade mark proprietor are economically linked, or that the ad is seriously detrimental to the reputation of that mark, merely on the basis that an advertiser uses another person's trade mark with additional wording indicating that the goods in question are being resold, such as 'used' or 'second-hand';*

— *is obliged to find that there is such a legitimate reason where the reseller, without the consent of the proprietor of the trade mark which it uses in the context of advertising for its resale activities, has removed reference to that trade mark from the goods, manufactured and placed on the market by that proprietor, and replaced it with a label bearing the reseller's name, thereby concealing the trade mark; and*

— *is obliged to find that a specialist reseller of second-hand goods under another person's trade mark cannot be prohibited from using that mark to advertise to the public its resale activities which include, in addition to the sale of second-hand goods under that mark, the sale of other second-hand goods, unless the sale of those other goods, in the light of their volume, their presentation or their poor quality, risks seriously damaging the image which the proprietor has succeeded in creating for its mark.*

([1]) OJ C 55, 7.3.2009.

Judgment of the Court (Second Chamber) of 1 July 2010 (reference for a preliminary ruling from the Corte Suprema di Cassazione — Italy) — Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v Paolo Speranza

(Case C-35/09) ([1])

(Indirect taxation — Tax on the increase in share capital — Article 4(1)(c) of Directive 69/335/EEC — National legislation making registration of the instrument recording an increase in the capital of a company subject to payment of duty — The recipient company and the notary jointly and severally liable — No capital contribution in fact made — Limitation of means of proof)

(2010/C 234/16)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione