

JUDGMENT OF THE COURT

of 20 March 2003

in Case C-291/00 (Reference for a preliminary ruling from the Tribunal de Grande Instance de Paris): LTJ Diffusion SA v Sadas Vertbaudet SA ⁽¹⁾

(Trade marks — Approximation of laws — Directive 89/104/EEC — Article 5(1)(a) — Notion of sign which is identical with the trade mark — Use of the distinctive element of the mark to the exclusion of other elements — Use of all the elements making up the trade mark but with the addition of other elements)

(2003/C 112/04)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-291/00: Reference to the Court under Article 234 EC by the Tribunal de grande instance de Paris (France) for a preliminary ruling in the proceedings pending before that court between LTJ Diffusion SA and Sadas Vertbaudet SA, on the interpretation of Article 5(1)(a) 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), the Court, composed of: G. C. Rodríguez Iglesias, President, M. Wathelet and R. Schintgen (Presidents of Chambers), C. Gulmann, P. Jann, F. Macken (Rapporteur), N. Colneric, S. von Bahr and J. N. Cunha Rodrigues, Judges; F. G. Jacobs, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 20 March 2003, in which it has ruled:

Article 5(1)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer.

⁽¹⁾ OJ C 273 of 23.9.2000.

JUDGMENT OF THE COURT

of 11 March 2003

in Case C-40/01 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Ansul BV v Ajax Brandbeveiliging BV ⁽¹⁾

(Trade marks — Directive 89/104/EEC — Article 12(1) — Revocation of trade mark owner's rights — Concept of genuine use of a trade mark — Maintenance of goods already sold and sales of replacement parts and accessories)

(2003/C 112/05)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-40/01: Reference to the Court under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that court between Ansul BV and Ajax Brandbeveiliging BV, on the interpretation of Article 12(1) 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), the Court, composed of: G. C. Rodríguez Iglesias, President, J.-P. Puissochet (Rapporteur), M. Wathelet and C. W. A. Timmermans, Presidents of Chamber, C. Gulmann, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 11 March 2003, in which it has ruled:

1. Article 12(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that there is 'genuine use' of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. When assessing whether use of the trade mark is genuine, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of the goods or services at issue, the characteristics of the market and the scale and frequency of use of the mark. The fact that a mark that is not used for goods newly available on the market but for goods that were sold in the past does not mean that its use is not genuine, if the proprietor makes actual use of the same mark for component parts that are integral to the