

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 2003

in Case C-283/01 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Shield Mark BV v Joost Kist h.o.d.n. Memex ⁽¹⁾

(Trade marks — Approximation of laws — Directive 89/104/EEC — Article 2 — Signs of which a trade mark may consist — Signs capable of being represented graphically — Sound signs — Musical notation — Written description — Onomatopoeia)

(2004/C 21/07)

(Language of the case: Dutch)

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

In Case C-283/01: 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 Shield Mark BV and Joost Kist h.o.d.n. Memex, on the interpretation of Article 2 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 (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; D. Ruiz-Jarabo Colomer, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 27 November 2003, in which it has ruled:

1. Article 2 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that sound signs must be capable of being regarded as trade marks provided that they are capable of distinguishing the goods or services of one undertaking from those of other undertakings and are capable of being represented graphically.
2. Article 2 of Directive 89/104 must be interpreted as meaning that a trade mark may consist of a sign which is not in itself capable of being perceived visually, provided that it can be represented graphically, particularly by means of images, lines or characters, and that its representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective.

In the case of a sound sign, those requirements are not satisfied when the sign is represented graphically by means of a description using the written language, such as an indication that the sign consists of the notes going to make up a musical work, or the indication that it is the cry of an animal, or by means of a simple onomatopoeia, without more, or by means of a sequence of musical notes, without more. On the other hand, those requirements are satisfied where the sign is

represented by a stave divided into measures and showing, in particular, a clef, musical notes and rests whose form indicates the relative value and, where necessary, accidentals.

⁽¹⁾ OJ C 275 of 29.9.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 2003

in Case C-429/01: Commission of the European Communities v French Republic ⁽¹⁾

(Failure of a Member State to fulfil obligations — Failure to transpose Directive 90/219/EEC — Genetically modified organisms — Contained use)

(2004/C 21/08)

(Language of the case: French)

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

In Case C-429/01, Commission of the European Communities (Agent: G. zur Hausen, assisted by M. van der Woude and V. Landes) with an address for service in Luxembourg, v French Republic (Agent: initially by G. de Bergues and D. Colas, then by G. de Bergues and C. Isidoro), with an address for service in Luxembourg, APPLICATION for a declaration that, by failing to transpose correctly and in full Articles 14(a) and (b), 15(1) and (2), 16(1) and 19(2) to (4) of Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms (OJ 1990 L 117, p. 1), as amended by Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress Directive 90/219 (OJ 1994 L 297, p. 29), and by failing to transpose the provisions of that directive in respect of certain contained use by the Ministry of Defence, the French Republic has failed to fulfil its obligations under that directive and Article 249 EC, the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, F. Macken and N. Colneric (Rapporteur), Judges; F.G. Jacobs, Advocate General; R. Grass, Registrar, has given a judgment on 27 November 2003, in which it:

1. Declares that, by failing to transpose correctly and in full Article 14(a) and (b), first subparagraph, third sentence, and Article 19(2) to (4) of Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms, as amended by Commission Directive 94/51/EC of 7 November 1994 adapting to technical progress