

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Gourmet Classic Ltd

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of the first indent of Article 20 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — Exemption from duty — Product based on wine, with an alcoholic content of 4.8 % per 100 kg of finished product, intended for cooking

Operative part of the judgment

The alcohol contained in cooking wine is, if it has an alcoholic strength exceeding 1.2 % by volume, to be classified as ethyl alcohol as referred to in the first indent of Article 20 of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages.

⁽¹⁾ OJ C 326, 30.12.2006.

Judgment of the Court (First Chamber) of 12 June 2008
(reference for a preliminary ruling from the Court of Appeal, United Kingdom) — O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited

(Case C-533/06) ⁽¹⁾

(Trade marks — Directive 89/104/EEC — Article 5(1) — Exclusive rights of the trade mark proprietor — Use of a sign identical with, or similar to, a mark in a comparative advertisement — Limitation of the effects of a trade mark — Comparative advertising — Directives 84/450/EEC and 97/55/EC — Article 3a(1) — Conditions under which comparative advertising is permitted — Use of a competitor's trade mark or of a sign similar to that mark)

(2008/C 209/12)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: O2 Holdings Limited, O2 (UK) Limited

Defendant: Hutchison 3G UK Limited

Re:

Reference for a preliminary ruling — Court of Appeal — Interpretation of Article 5(1)(a) and (b) of 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) and Article 3a of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17) — Use of a competitor's trade mark in an advertisement for the purposes of comparing the characteristics of the goods or services sold by the advertiser with those of the competitor

Operative part of the judgment

- Article 5(1) and (2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks and Article 3a(1) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, must be interpreted to the effect that the proprietor of a registered trade mark is not entitled to prevent the use by a third party of a sign identical with, or similar to, his mark, in a comparative advertisement which satisfies all the conditions, laid down in Article 3a(1) of Directive 84/450, under which comparative advertising is permitted.

However, where the conditions required in Article 5(1)(b) of Directive 89/104 to prevent the use of a sign identical with, or similar to, a registered trade mark are met, a comparative advertisement in which that sign is used cannot satisfy the condition, laid down in Article 3a(1)(d) of Directive 84/450, as amended by Directive 97/55, under which comparative advertising is permitted.

- Article 5(1)(b) of Directive 89/104 is to be interpreted as meaning that the proprietor of a registered trade mark is not entitled to prevent the use by a third party, in a comparative advertisement, of a sign similar to that mark in relation to goods or services identical with, or similar to, those for which that mark was registered where such use does not give rise to a likelihood of confusion on the part of the public, and that is so irrespective of whether or not the comparative advertisement satisfies all the conditions laid down in Article 3a of Directive 84/450, as amended by Directive 97/55, under which comparative advertising is permitted

⁽¹⁾ OJ C 56, 10.3.2007.