

On the question of phonetic similarity, the General Court distorted the evidence and incorrectly assessed the facts, and its decision contains a substantive inaccuracy in the findings attributable to the documents submitted to it.

The General Court failed to take into account of the involvement of professionals in the sale of pharmaceutical products.

On the question of visual similarity, the General court misapplied its own case law to the effect that the beginnings of marks are generally considered to be the most important and that in marks which are relatively short such as those in this case, the central elements are as important as the elements at the beginning and end of the sign.

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(<sup>1</sup>) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark  
OJ L 78, p. 1

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**Reference for a preliminary ruling from High Court of Ireland made on 11 June 2012 — Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, The Commissioner of the Garda Síochána, Ireland and the Attorney General**

(Case C-293/12)

(2012/C 258/18)

*Language of the case: English*

**Referring court**

High Court of Ireland

**Parties to the main proceedings**

*Applicant:* Digital Rights Ireland Ltd

*Defendants:* Minister for Communications, Marine and Natural Resources, Minister for Justice, Equality and Law Reform, The Commissioner of the Garda Síochána, Ireland and the Attorney General

**Questions referred**

1. Is the restriction on the rights of the Plaintiff in respect of its use of mobile telephony arising from the requirements of

Articles 3, 4, and 6 of Directive 2006/24/EC (<sup>1</sup>) incompatible with Article 5.4 TEU in that it is disproportionate and unnecessary or inappropriate to achieve the legitimate aims of:

(a) Ensuring that certain data are available for the purposes of investigation, detection and prosecution of serious crime?

and/or

(b) Ensuring the proper functioning of the internal market of the European Union?

2. Specifically,

(i) Is Directive 2006/24/EC compatible with the right of citizens to move and reside freely within the territory of Member States laid down in Article 21 TFEU?

(ii) Is Directive 2006/24/EC compatible with the right to privacy laid down in Article 7 of the Charter and Article 8 ECHR?

(iii) Is Directive 2006/24/EC compatible with the right to the protection of personal data laid down in Article 8 of the Charter?

(iv) Is Directive 2006/24/EC compatible with the right to freedom of expression laid down in Article 11 of the Charter and Article 10 ECHR?

(v) Is Directive 2006/24/EC compatible with the right to Good Administration laid down in Article 41 of the Charter?

3. To what extent do the Treaties — and specifically the principle of loyal cooperation laid down in Article 4.3 of the Treaty on European Union — require a national court to inquire into, and assess, the compatibility of the national implementing measures for Directive 2006/24/EC with the protections afforded by the Charter of Fundamental Rights, including Article 7 thereof (as informed by Article 8 of the ECHR)?

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(<sup>1</sup>) Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC  
OJ L 105, p. 54