

JUDGMENT OF THE COURT (SECOND CHAMBER)
OF 22 JANUARY 1981¹

Dansk Supermarked A/S
v A/S Imerco
(preliminary ruling requested by the Højesteret)

“Free circulation of goods — Copyright, trade marks, unfair competition”

Case 58/80

1. *Free movement of goods — Industrial and commercial property — Rights — Protection — Limits — Exhaustion of rights — Goods covered by a copyright or a trade mark — Lawful marketing in a Member State — Prohibition of importation into another Member State — Not permissible*
(EEC Treaty, Arts 30 and 36)
2. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Legislation on unfair competition — Application to imported goods — Fact of importation incapable of amounting to an act of unfair competition*
(EEC Treaty, Art. 30)
3. *Free movement of goods — Provisions of Treaty — Mandatory nature — Derogations agreed between individuals — Not permissible*

1. It is clear from Article 36 of the EEC Treaty, in particular the second sentence, as well as from the context, that whilst the Treaty does not affect the existence of rights recognized by the legislation of a Member State in matters of industrial and commercial property, yet the exercise of those rights may none the less, depending on the circumstances, be restricted by the prohibitions of the Treaty.

Inasmuch as it provides an exception to one of the fundamental principles of the common market, Article 36 in fact admits exceptions are justified for the purpose of safeguarding rights which constitute the specific subject-matter of that property. The exclusive right guaranteed by the legislation on industrial and commercial property is exhausted when a product has been lawfully distributed on the market in

1 — Language of the Case: Danish.

another Member State by the actual proprietor of the right or with his consent.

Hence judicial authorities of a Member State may not prohibit, on the basis of a copyright or of a trade mark, the marketing on the territory of that State of a product to which one of those rights applies if that product has been lawfully marketed on the territory of another Member State by the proprietor of such rights or with his consent.

2. Community law does not in principle have the effect of preventing the application in a Member State to goods imported from other Member States of the provisions on marketing in force in the State of importation. It follows that the marketing of

imported goods may be prohibited if the conditions on which they are sold constitutes an infringement of the marketing usages considered proper and fair in the Member State of importation.

However, the *actual fact of the importation of* goods which have been lawfully marketed in another Member State cannot be considered as an improper or unfair act since that description may be attached only to offer or exposure for sale on the basis of circumstances distinct from the importation itself.

3. It is impossible in any circumstances for agreements between individuals to derogate from the mandatory provisions of the Treaty on the free movement of goods.

In Case 58/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Højesteret [Supreme Court of Denmark], for a preliminary ruling in the action pending before that court between

DANSK SUPERMARKED A/S, having its registered office in Århus,

and

A/S IMERCO, having its registered office in Glostrup, Copenhagen,

on the interpretation of Articles 30 and 85 of the EEC Treaty and of Regulation No 67/67/EEC of the Commission of 22 March 1967 on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements in relation to Danish legislation on copyright, trade marks and unfair competition,