

Judgment of the Court (Fourth Chamber) of 3 April 2008
(reference for a preliminary ruling from the Conseil d'État
(France)) — *Banque Fédérative du Crédit Mutuel v Ministre
de l'Économie, des Finances et de l'Industrie*

(Case C-27/07) ⁽¹⁾

*(Corporation tax — Directive 90/435/EEC — Taxable income
of a parent company — Non deductibility of costs and
expenses relating to a holding in a subsidiary — Fixing of
costs at a flat rate — Ceiling of 5 % of the profits distributed
by the subsidiary — Inclusion of tax credits)*

(2008/C 128/20)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Banque Fédérative du Crédit Mutuel

Defendant: Ministre de l'Économie, des Finances et de l'Industrie

Re:

Reference for a preliminary ruling — Conseil d'État (France) — Interpretation of Articles 4, 5 and 7 of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — Add-back to the taxable income of the parent company of a fixed proportion of the costs and expenses, equal to 5 % of the income from its holdings in a subsidiary, including tax credits — Compatibility of that add back with the limit provided for in Article 4 of the directive — Need for the tax credit to be entirely set off against the tax payable by the parent company.

Operative part of the judgment

The concept of 'profits distributed by the subsidiary', within the meaning of the last sentence of Article 4(2) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, is to be interpreted as not precluding legislation of a Member State which includes in those profits tax credits which have been granted in order to offset a withholding tax levied by the Member State of the subsidiary in the hands of the parent company.

⁽¹⁾ OJ C 82, 14.4.2007.

Judgment of the Court (First Chamber) of 10 April 2008
(reference for a preliminary ruling from the Hoge Raad der
Nederlanden, Netherlands) — *adidas AG, adidas Benelux
BV v Marca Mode CV, C&A Nederland, H&M Hennes &
Mauritz Netherlands BV, Vendex KBB Nederland BV*

(Case C-102/07) ⁽¹⁾

*(Trade marks — Articles 5(1)(b), 5(2) and 6(1)(b) of Directive
89/104/EEC — Requirement of availability — Three-stripe
figurative marks — Two-stripe motifs used by competitors as
decoration — Complaint alleging infringement and dilution of
the mark)*

(2008/C 128/21)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: adidas AG, adidas Benelux BV

Defendants: Marca Mode CV, C&A Nederland, H&M Hennes & Mauritz Netherlands BV, Vendex KBB Nederland BV

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 3(1)(b) and (c) 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) — Non-registration or invalidity — Lack of distinctive character — Acquisition through usage — General interest in not restricting unduly the availability of signs perceived by the relevant public as signs serving to embellish a product and not to distinguish it

Operative part of the judgment

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 the requirement of availability cannot be taken into account in the assessment of the scope of the exclusive rights of the proprietor of a trade mark, except in so far as the limitation of the effects of the trade mark defined in Article 6(1)(b) of the Directive applies.

⁽¹⁾ OJ C 82, 14.4.2007.