

4. Where the court of a Member State does not have jurisdiction at all, it must declare of its own motion that it has no jurisdiction, but is not required to transfer the case to another court. However, in so far as the protection of the best interests of the child so requires, the national court which has declared of its own motion that it has no jurisdiction must inform, directly or through the central authority designated under Article 53 of Regulation No 2201/2003, the court of another Member State having jurisdiction.

(¹) OJ C 22, 26.01.2008.

**Judgment of the Court (Fourth Chamber) of 23 April 2009
(reference for a preliminary ruling from the Oberster
Gerichtshof — Austria) — Falco Privatstiftung, Thomas
Rabitsch v Gisela Weller-Lindhorst**

(Case C-533/07) (¹)

(Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(1)(a) and the second indent of Article 5(1)(b) — The concept of ‘provision of services’ — Contract assigning intellectual property rights)

(2009/C 141/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: Falco Privatstiftung, Thomas Rabitsch

Defendant: Gisela Weller-Lindhorst

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Meaning of ‘provision of services’ and of the ‘place in a Member State where the services should have been provided’ — Jurisdiction over a case relating to the payment of royalties in respect of a licence to exploit a musical work

Operative part of the judgment

1. The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and

enforcement of judgments in civil and commercial matters, is to be interpreted to the effect that a contract under which the owner of an intellectual property right grants its contractual partner the right to use that right in return for remuneration is not a contract for the provision of services within the meaning of that provision.

2. In order to determine, under Article 5(1)(a) of Regulation No 44/2001, the court having jurisdiction over an application for remuneration owed pursuant to a contract under which the owner of an intellectual property right grants to its contractual partner the right to use that right, reference must continue to be made to the principles which result from the case-law of the Court of Justice on Article 5(1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic.

(¹) OJ C 37, 09.02.2008.

**Judgment of the Court (Third Chamber) of 23 April 2009
(Reference for a preliminary ruling from the Wojewódzki
Sąd Administracyjny we Wrocławiu (Poland)) — Uwe
Rüffler v Dyrektor Izby Skarbowej we Wrocławiu
Ośrodek Zamiejscowy w Wałbrzychu**

(Case C-544/07) (¹)

(Article 18 EC — Income tax legislation — Reduction of income tax by the amount of health insurance contributions paid in the Member State of taxation — Refusal of reduction by the amount of contributions paid in other Member States)

(2009/C 141/24)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny we Wrocławiu

Parties to the main proceedings

Applicant: Uwe Rüffler

Defendant: Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu

Re:

Reference for a preliminary ruling — Wojewódzki Sąd Administracyjny we Wrocławiu (Poland) — Interpretation of the first paragraph of Article 12 EC and of Article 39(1) and (2) EC — National legislation on income tax limiting the right to deduct health insurance contributions from that tax to contributions paid solely in the Member State concerned

Operative part of the judgment

Article 18(1) EC precludes legislation of a Member State which makes the granting of a right to a reduction of income tax by the amount of health insurance contributions paid conditional on payment of those contributions in that Member State on the basis of national law and results in the refusal to grant such a tax advantage where the contributions liable to be deducted from the amount of income tax due in that Member State have been paid under the compulsory health insurance scheme of another Member State.

(¹) OJ C 37, 9.2.2008.

Judgment of the Court (First Chamber) of 23 April 2009 (reference for a preliminary ruling from the Cour de cassation — France) — Copad SA v Christian Dior couture SA, Vincent Gladel, as liquidator of Société industrielle lingerie (SIL), Société industrielle lingerie (SIL)

(Case C-59/08) (¹)

(Directive 89/104/EEC — Trade-mark law — Exhaustion of the rights of the proprietor of the trade mark — Licence agreement — Sale of goods bearing the trade mark in disregard of a clause in the licence agreement — No consent of the proprietor of the mark — Sale to discount stores — Damage to the reputation of the trade mark)

(2009/C 141/25)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Copad SA

Defendants: Christian Dior couture SA, Vincent Gladel, as liquidator of Société industrielle lingerie (SIL), Société industrielle lingerie (SIL)

Re:

Reference for a preliminary ruling — Cour de Cassation (France) — Interpretation of Articles 5, 7, and 8(2) of First Council Directive No 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) — Concept of the exhaustion of the rights of the trade mark proprietor — Sale, by the licensee, of goods bearing the trade mark in disregard of a provision of the licensing agreement prohibiting certain methods of marketing — Sale to wholesalers and discount stores — Damage to the trade mark's prestige — No consent by the trade mark proprietor

Operative part of the judgment

1. Article 8(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, is to be interpreted as meaning that the proprietor of a trade mark can invoke the rights conferred by that trade mark against a licensee who contravenes a provision in a licence agreement prohibiting, on grounds of the trade mark's prestige, sales to discount stores of goods such as the ones at issue in the main proceedings, provided it has been established that that contravention, by reason of the situation prevailing in the case in the main proceedings, damages the allure and prestigious image which bestows on those goods an aura of luxury.
2. Article 7(1) of Directive 89/104, as amended by the Agreement on the European Economic Area, is to be interpreted as meaning that a licensee who puts goods bearing a trade mark on the market in disregard of a provision in a licence agreement does so without the consent of the proprietor of the trade mark where it is established that the provision in question is included in those listed in Article 8(2) of that Directive.
3. Where a licensee puts luxury goods on the market in contravention of a provision in a licence agreement but must nevertheless be considered to have done so with the consent of the proprietor of the trade mark, the proprietor of the trade mark can rely on such a provision to oppose a resale of those goods on the basis of Article 7(2) of Directive 89/104, as amended by the Agreement on the European Economic Area, only if it can be established that, taking into account the particular circumstances of the case, such resale damages the reputation of the trade mark.

(¹) OJ C 92, 12.04.2008.

Judgment of the Court (Fourth Chamber) of 23 April 2009 (reference for a preliminary ruling from the Nógrád Megyei Bíróság (Republic of Hungary)) — PARAT Automotive Cabrio Textiltetőket Gyártó Kft. v Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

(Case C-74/08) (¹)

(Sixth VAT Directive — Accession of a new Member State — Tax on subsidised purchase of goods — Right to deduct — Exclusions laid down by national legislation at the time the Sixth Directive came into force — Member States' option to retain exclusions)

(2009/C 141/26)

Language of the case: Hungarian

Referring court

Nógrád Megyei Bíróság