

2. If the first question is answered in the negative:

Is the applicant to be regarded as acting in bad faith if he applies for the trade mark in order to be able to prevent a competitor from continuing to use the sign, where, at the time he files his application, he knows or ought to know that by using an identical or similar sign for the same goods or services, or goods or services which are so similar as to be capable of being confused, the competitor has already acquired 'valuable property rights'?

3. If either the first or the second question is answered in the affirmative:

Is bad faith excluded if the applicant's sign has already obtained a reputation with the public and is therefore protected under competition law?

(¹) OJ 1994 L 11, p. 1.

Action brought on 29 November 2007 — Commission of the European Communities v Portuguese Republic

(Case C-530/07)

(2008/C 37/18)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by S. Pardo Quintillán and G. Braga da Cruz, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing

(a) to provide the agglomerations of Angra do Heroísmo, Bacia do Rio Uima (Fiães de S. Jorge), Costa de Aveiro, Covilhã, Espinho/Feira, Fátima, Ponta delgada, Ponte de Lima, Póvoa de Varzim/Vila do Conde, Santa Cita, Vila Real de Santo António, Viana do Castelo-Cidade and Vila Real with collecting systems, as provided for by Article 3 of Council Directive 91/271/EEC (¹) of 21 May 1991 concerning urban waste-water treatment, and

(b) to subject to secondary treatment or an equivalent treatment urban waste water from the agglomerations of Alta Nabão, Alverca, Bacia do Rio Uima (Fiães de S. Jorge), Carvoeiro, Costa da Caparica/Trafaria, Costa de Aveiro, Costa Oeste, Covilhã, Espinho/Feira, Fátima, Fundão/Alçaria, Lisbon, Matosinhos, Milfontes, Moledo/Âncora/Alife, Nazaré/Famalicão, Pedrógão Grande, Ponta delgada, Ponte de Lima, Póvoa de Varzim/Vila do Conde,

Santa Cita, Vila Nova de Gaia/Douro Nordeste, Vila Real de Santo António, Viana do Castelo-Cidade, Vila Franca de Xira and Vila Real, as provided for by Article 4 of that directive,

the Portuguese Republic has failed to fulfil its obligations under Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Member States were to ensure, at the latest by 31 December 2000, that all agglomerations with a population equivalent (p.e.) of more than 15 000 and, at the latest by 31 December 2005, that all agglomerations with a p.e. of between 2 000 and 15 000 were provided with collecting systems for urban waste water.

Article 4 of the Directive provides as follows:

'1. Member States shall ensure that urban waste water entering collecting systems shall before discharge be subject to secondary treatment or an equivalent treatment as follows:

- at the latest by 31 December 2000 for all discharges from agglomerations of more than 15 000 p.e.,
- at the latest by 31 December 2005 for all discharges from agglomerations of between 10 000 and 15 000 p.e.,
- at the latest by 31 December 2005 for discharges to fresh water and estuaries from agglomerations of between 2 000 and 10 000 p.e.

...'

(¹) OJ L 135, p. 40.

Reference for a preliminary ruling from the Obersten Gerichtshof (Austria) lodged on 29 November 2007 — Fachverband der Buch- und Medienwirtschaft v LIBRO Handelsgesellschaft mbH

(Case C-531/07)

(2008/C 37/19)

Language of the case: German

Referring court

Obersten Gerichtshof

Parties to the main proceedings

Applicant: Fachverband der Buch- und Medienwirtschaft

Defendant: LIBRO Handelsgesellschaft mbH

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 29 November 2007 — Falco Privatstiftung and Thomas Rabitsch v Gisela Weller-Lindhorst

(Case C-533/07)

(2008/C 37/20)

Language of the case: German

Questions referred

1. Is Article 28 EC to be interpreted as meaning that it precludes the application *per se* of national provisions which oblige only importers of German language books to fix and to publish a retail price for books imported into Austria which is binding on the retailer, where the importer cannot fix a retail price which is lower than the retail price fixed or recommended by the publisher for the State in which the book is published, or lower than the retail price recommended for his national territory by a publisher whose seat is not in the territory of a Contracting Party to the Agreement on the European Economic Area (EEA), less any value added tax such price includes, but, by way of exception, permit an importer who purchases in the territory of a Contracting Party to the EEA at a price lower than the usual purchase prices to sell at less than the price fixed or recommended by the publisher for the State of publication — or in the case of re-imports the price fixed by the Austrian publisher — by an amount proportionate to the commercial advantage he has obtained?
2. If the first question is answered in the affirmative:

Is the national statutory obligation to sell books at the fixed price which, according to the first question, is *per se* incompatible with Article 28 EC — in any event on the basis that it constitutes selling arrangements which infringe free movement of goods — justified by reference to Article 30 or Article 151 EC, on the basis that its purpose is, very generally, described as the need to have regard to ‘the status of books as cultural assets, consumers’ interest in reasonable prices for books, and the commercial characteristics of the book trade’, for example having regard to a general interest in encouraging the production of books, a diversity of titles at regulated prices, and a diversity of bookshops, notwithstanding the lack of empirical data which could prove that a statutory obligation to sell books at the fixed price is a suitable means for achieving the intended purposes?

3. If the first question is answered in the negative:

Is the national statutory obligation to sell books at the fixed price, as described in the first question, compatible with Articles 3(1)(g) EC, 10 EC and 81 EC, notwithstanding that in terms of time and substance there was a seamless transition from them to the previous contractual obligation on booksellers to sell at prices fixed by publishers for published works (the 1993 reverse collection scheme), and they replaced this contractual scheme?

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Falco Privatstiftung, Thomas Rabitsch

Defendant: Gisela Weller-Lindhorst

Questions referred

1. Is a contract under which the owner of an incorporeal right grants the other contracting party the right to use that right (a licence agreement) a contract regarding ‘the provision of services’ within the meaning of Article 5(1)(b) 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 (the Brussels I Regulation) ⁽¹⁾?
2. If Question 1 is answered in the affirmative:
 - 2.1. Is the service provided at each place in a Member State where use of the right is allowed under the contract and also actually occurs?
 - 2.2. Or is the service provided where the licensor is domiciled or, as the case may be, at the place of the licensor’s central administration?
 - 2.3. If Question 2.1 or Question 2.2 is answered in the affirmative, does the court which thereby has jurisdiction also have the power to rule on royalties which result from use of the right in another Member State or in a third country?
3. If Question 1 or Questions 2.1 and 2.2 are answered in the negative: Is jurisdiction as regards payment of royalties under Article 5(1)(a) and (c) of the Brussels I Regulation still to be determined in accordance with 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 (the Brussels Convention)?

⁽¹⁾ OJ 2001 L 12, p. 1.