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

Parties to the main proceedings

Applicant: PARAT Automotive Cabrio Textiltetőket Gyártó Kft.

Defendant: Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

Re:

Reference for a preliminary ruling — Nógrád Megyei Bíróság — Interpretation of Article 17 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — National legislation restricting the deductibility of the tax relating to the subsidised acquisition of equipment to the non-subsidised portion

Operative part of the judgment

1. *Article 17(2) and (6) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted to the effect that it precludes national legislation which in the case of acquisition of goods subsidised by public funds, allow the deduction of related VAT only up to the limit of the part of the costs of that acquisition that is not subsidised.*

2. *Article 17(2) of the Sixth Directive confers on taxable persons rights on which they may rely before a national court to contest national rules that are incompatible with that Article.*

([1]) OJ C 116, 9.5.2008.

Judgment of the Court (Fourth Chamber) of 2 April 2009 (reference for a preliminary ruling from the Thüringer Finanzgericht, Gotha (Germany)) — Glückauf Brauerei GmbH v Hauptzollamt Erfurt

(Case C-83/08) ([1])

(Harmonisation of the structures of excise duties — Directive 92/83/EEC — Article 4(2) — Small independent brewery which is legally and economically independent of any other brewery — Criteria of legal and economic independence — Possibility of being subject to indirect influence)

(2009/C 141/27)

Language of the case: German

Referring court

Thüringer Finanzgericht, Gotha

Parties to the main proceedings

Applicant: Glückauf Brauerei GmbH

Defendant: Hauptzollamt Erfurt

Re:

Reference for a preliminary ruling — Thüringer Finanzgericht, Gotha (Germany) — Interpretation of Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — Classification as 'independent small brewery' for the purposes of application of reduced rates of duty — Criterion of 'economic independence' — Brewery liable, because of shareholdings and the allocation of voting rights, to be indirectly influenced by two other breweries

Operative part of the judgment

Article 4(2) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that a situation characterised by the existence of structural links in terms of shareholdings and voting rights, and which results in a situation in which one individual, performing his duties as manager of a number of the breweries concerned, is able, independently of his actual conduct, to exercise influence over the taking of business decisions by those breweries, prevents them from being considered economically independent of each other.

([1]) OJ C 128, 24.5.2008.

Judgment of the Court (Fifth Chamber) of 2 April 2009 (Reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Hauptzollamt Bremen v J.E. Tyson Parketthandel GmbH hanse j.

(Case C-134/08) ([1])

(Regulation (EC) No 2193/2003 — Additional customs duties on imports of certain products originating in the United States of America — Temporal scope — Article 4(2) — Products exported after the entry into force of that regulation for which it can be demonstrated that they were already on their way to the Community when those duties were first applied — Whether subject to duty)

(2009/C 141/28)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hauptzollamt Bremen

Defendant: J.E. Tyson Parketthandel GmbH hanse j.