

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 3 June 2008 — Google France v Viaticum, Luteciel

(Case C-237/08)

(2008/C 209/40)

Language of the case: French

Referring court

Cour de Cassation (Commercial, Financial and Economic Division)

Parties to the main proceedings

Appellant: Google France

Respondent: Viaticum, Luteciel

Questions referred

1. Must Article 5(1)(a) and (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ⁽¹⁾ be interpreted as meaning that a provider of a paid referencing service who makes available to advertisers keywords reproducing or imitating registered trade marks and arranges by the referencing agreement to create and favourably display, on the basis of those keywords, advertising links to sites offering goods identical or similar to those covered by the trade mark registration is using those trade marks in a manner which their proprietor is entitled to prevent?
2. In the event that such use does not constitute a use which may be prevented by the trade mark proprietor under the directive or [Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark] ⁽²⁾, may the provider of the paid referencing service be regarded as providing an information society service consisting of the storage of information provided by the recipient of the service, within the meaning of Article 14 of Directive 2000/31 of 8 June 2000 ⁽³⁾, so that that provider cannot

incur liability before it has been informed by the trade mark proprietor of the unlawful use of the sign by the advertiser?

⁽¹⁾ OJ 1989 L 40, p. 1.

⁽²⁾ OJ 1994 L 11, p. 1.

⁽³⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 3 June 2008 — Google France v CNRRH, Pierre-Alexis Thonet, Bruno Raboin, Tiger, a franchisee of 'Unicis'

(Case C-238/08)

(2008/C 209/41)

Language of the case: French

Referring court

Cour de Cassation (Commercial, Financial and Economic Division)

Parties to the main proceedings

Appellant: Google France

Respondents: CNRRH, Pierre-Alexis Thonet, Bruno Raboin, Tiger, a franchisee of 'Unicis'

Questions referred

1. Does the reservation by an economic operator, by means of an agreement on paid Internet referencing, of a keyword triggering, in the case of a request using that word, the display of a link proposing connection to a site operated by that operator in order to offer for sale goods or services, and which reproduces or imitates a trade mark registered by a third party in order to designate identical or similar goods, without the authorisation of the proprietor of that trade mark, constitute in itself an infringement of the exclusive right guaranteed to the latter by Article 5 of First Council Directive 89/104/EEC of 21 December 1988 ⁽¹⁾?

2. Must Article 5(1)(a) and (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks be interpreted as meaning that a provider of a paid referencing service who makes available to advertisers keywords reproducing or imitating registered trade marks and arranges by the referencing agreement to create and favourably display, on the basis of those keywords, advertising links to sites offering goods identical or similar to those covered by the trade mark registration is using those trade marks in a manner which their proprietor is entitled to prevent?
3. In the event that such use does not constitute a use which may be prevented by the trade mark proprietor under the directive or [Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark] ⁽²⁾, may the provider of the paid referencing service be regarded as providing an information society service consisting of the storage of information provided by the recipient of the service, within the meaning of Article 14 of Directive 2000/31 of 8 June 2000 ⁽³⁾, so that that provider cannot incur liability before it has been informed by the trade mark proprietor of the unlawful use of the sign by the advertiser?

⁽¹⁾ 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).

⁽²⁾ OJ 1994 L 11, p. 1.

⁽³⁾ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

Action brought on 4 June 2008 — Commission of the European Communities v Italian Republic

(Case C-244/08)

(2008/C 209/42)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: A. Aresu and M. Afonso, Agents)

Defendant: Italian Republic

Form of order sought

- Declare that, with regard to the refund of VAT to a taxable person established in another Member State or in a non-member country, even where that person has a fixed establishment, the Italian Republic has failed to fulfil its obligations under Article 1 of Eighth Council Directive 79/1072/EEC ⁽¹⁾ of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, and Article 1 of Thirteenth Council Directive 86/560/EEC ⁽²⁾ of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory, in so far as it obliges a taxable person whose registered office is in a Member State or in a non-member country but who has a fixed establishment which, during the period concerned, supplied goods or services in Italy, to obtain a refund of input VAT by means of the mechanisms provided for in those directives, rather than by means of deduction, where goods or services are purchased not through the fixed establishment in Italy but directly from the place in which that person is principally established;
- order the Italian Republic to pay the costs.

Pleas in law and main arguments

By the present action, the Commission requests the Court of Justice to declare that it is incompatible with Community law for an Italian measure to oblige a person who is subject to VAT whose registered office is in a Member State or in a non-member country but who also has a fixed establishment in Italy which, during the period concerned, has supplied goods or services in Italy, to obtain a refund of input VAT by means of the mechanisms provided for in Directive 79/1072/EEC (the Eighth VAT Directive) and Directive 86/560/EEC (the Thirteenth VAT Directive) rather than by means of the normal deduction mechanism provided for as a general rule in Directive 77/388/EEC ⁽³⁾ (the Sixth VAT Directive), where goods or services are purchased not through the fixed establishment in Italy but directly from the place in which that person is principally established abroad.

Such a measure, which makes it excessively cumbersome for the taxpayers concerned to comply with their tax obligations, is, in the Commission's view, contrary to the provisions and fundamental principles of the above-mentioned VAT directives, which provide that a foreign taxpayer who has a fixed establishment in Italy and who engages in commercial transactions in Italy from