

Pleas in law and main arguments

The period prescribed for transposition of Directive 2003/59/EC expired on 9 September 2006. At the time the present action was brought, the defendant had still not adopted all the measures necessary to transpose the directive or, in any event, had not notified those measures to the Commission.

(¹) OJ 2003 L 226, p. 4.

Reference for a preliminary ruling from the Oberlandesgericht Nürnberg (Germany) lodged on 6 April 2009 — Coty Prestige Lancaster Group GmbH v Simex Trading AG

(Case C-127/09)

(2009/C 141/55)

Language of the case: German

Referring court

Oberlandesgericht Nürnberg

Parties to the main proceedings

Applicant: Coty Prestige Lancaster Group GmbH

Defendant: Simex Trading AG

Question referred

Are goods put on the market within the meaning of Article 13(1) of Regulation (EC) No 40/94 (¹) and Article 7 of Directive 89/104/EEC (²) if 'perfume testers' are made available to contractually-bound intermediaries without transfer of ownership and with a prohibition on the sale thereof so that those intermediaries are able to allow potential customers to use the contents of the goods for test purposes, the goods bearing a notice stating that they may not be sold, the recall of the goods by the manufacturer/trade mark proprietor at any time remaining contractually possible and the packaging of the goods being significantly different from the goods usually put on the market by the manufacturer/trade mark proprietor in that it is plainer?

(¹) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, OJ L 11, 14.1.1994, p. 1–36.

(²) First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, OJ L 40, 11.2.1989, p. 1–7.

Reference for a preliminary ruling from the Arios Pagos (Greece) lodged on 10 April 2009 — Organismos Sillogikis Diakhirisis Dimiourgon Theatrikon kai Optikoakoustikon Ergon v Divani Acropolis Hotel and Tourism AE

(Case C-136/09)

(2009/C 141/56)

Language of the case: Greek

Referring court

Arios Pagos

Parties to the main proceedings

Applicant: Organismos Sillogikis Diakhirisis Dimiourgon Theatrikon kai Optikoakoustikon Ergon

Respondent: Divani Acropolis Hotel and Tourism AE

Question referred

Does the mere installation of television sets by a hotelier in hotel rooms and their connection to the central antenna installed in the hotel, without any other action, intermediation or intervention by the hotelier, constitute communication of the work to the public within the meaning of Article 3(1) of Directive 2001/29/EC, and, in particular, in accordance with the aforementioned judgment of the Court of Justice of 7 December 2006 in Case C-306/05 *Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA*, does this involve the distribution of a signal, via television sets, to customers who stay in the hotel rooms, by means of the technical intervention of the hotelier?

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 15 April 2009 — M.M. Josemans and the Burgemeester of Maastricht v Rechtbank Maastricht

(Case C-137/09)

(2009/C 141/57)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

- Applicants:*
1. M.M. Josemans
 2. Burgemeester of Maastricht

Questions referred

1. Does a regulation, such as that at issue in the main proceedings, concerning the access of non-residents to coffeeshops, fall wholly or partly within the scope of the EC Treaty, with particular reference to the free movement of goods and/or services, or of the prohibition of