

Case C-140/10

Greenstar-Kanzi Europe NV

v

Jean Hustin and Jo Goossens

(Reference for a preliminary
ruling from the Hof van Cassatie)

(Regulation (EC) No 2100/94, as amended by Regulation (EC) No 873/2004 — Interpretation of Articles 11(1), 13(1) to (3), 16, 27, 94 and 104 — Principle of exhaustion of Community plant variety rights — Licensing contract — Action for infringement against a third party — Infringement of the licensing contract by the person enjoying the right of exploitation in his contractual relationship with the third party)

Opinion of Advocate General Jääskinen delivered on 7 July 2011 I - 10077

Judgment of the Court (First Chamber), 20 October 2011 I - 10092

Summary of the Judgment

Agriculture — Uniform legislation — Protection of plant varieties — Action for infringement brought by the holder of a Community plant variety right or the person enjoying the right of exploitation against a third party which has obtained harvested material of the protected variety through another person enjoying the right of exploitation who has contravened the conditions or limitations set out in the licensing contract concluded at an earlier stage with the holder — Lawfulness — Condition

(Council Regulation No 2100/94, as amended by Regulation No 873/2004, Arts 11(1), 13(1) to (3), 16, 27, 94 and 104)

Article 94 of Regulation No 2100/94 on Community plant variety rights, as amended by Regulation No 873/2004, read in conjunction with Articles 11(1), 13(1) to (3), 16, 27 and 104 thereof, must be interpreted as meaning that the holder of a Community plant variety right or the person enjoying the right of exploitation may bring an action for infringement against a third party which has obtained harvested material of the protected variety through another person enjoying the right of exploitation who has contravened the conditions or limitations set out in the licensing contract that that other person concluded at an earlier stage with the holder to the extent that the conditions or limitations in question relate directly to the essential features of the Community plant variety right

concerned. It is for the national court to make that assessment.

It is of no significance for the assessment of the infringement in such a case that the third party which effected the acts on the harvested material of the protected variety sold or disposed of was aware or was deemed to be aware of the conditions or limitations imposed in that licensing contract.

(see paras 44, 49, operative part 1-2)