



Reports of Cases

Case C-376/11

Pie Optiek SPRL

v

Bureau Gevers SA and European Registry for Internet Domains ASBL

(Reference for a preliminary ruling from the cour d'appel de Bruxelles)

(Internet — .eu Top Level Domain — Regulation (EC) No 874/2004 — Domain names — Phased registration — Article 12(2) — Concept of 'licensees of prior rights' — Person authorised by the proprietor of a trade mark to register, in his own name but on behalf of that proprietor, a domain name identical or similar to that trade mark — No authorisation for other uses of the sign as a trade mark)

Summary of the Judgment

1. *EU law — Interpretation — Provision making no express reference to the law of the Member States — Independent and uniform interpretation*
2. *EU law — Interpretation — Methods — Interpretation of an implementing regulation in the light of the basic regulation*
3. *Trans-European networks — Telecommunications sector — Internet — Implementation and functions of a Top Level Domain — Application for registration relating to the name of a registered trade mark — Person entitled to make the application — Licensees of prior rights — Meaning — Person authorised by the proprietor of the trade mark to register a domain name identical or similar to that trade mark — Not included*

(Commission Regulation No 874/2004, Art. 12(2), third subpara.)

1. See the text of the decision.

(see para. 33)

2. See the text of the decision.

(see para. 34)

3. The third subparagraph of Article 12(2) of Regulation No 874/2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration must be interpreted as meaning that, in a situation where the prior right concerned is a trade mark right, the words 'licensees of prior rights' do not refer to a person who has been authorised by the proprietor of the trade mark concerned solely to register, in his own name but

on behalf of that proprietor, a domain name identical or similar to that trade mark, but without that person being authorised to use the trade mark commercially in a manner consistent with its functions.

Where the prior right is a trade mark right, that provision covers licensing contracts, in which the proprietor of the trade mark confers on the licensee, within the limits set by the clauses of the licensing contract, the right to use that mark for the purposes falling within the area of the exclusive rights conferred by that mark. By contrast, a contract by which the contractual partner of the proprietor of the trade mark right undertakes, in return for remuneration, to use reasonable efforts to file an application and obtain a registration for a .eu domain name is more akin to a contract for services under which that party carries out a particular activity in return for remuneration.

(see paras 47, 49, 53, operative part)