

Operative part of the judgment

1. On a proper construction of Article 11(2) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, it is possible that an unregistered design may reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union, if images of the design were distributed to traders operating in that sector, which it is for the Community design court to assess, having regard to the circumstances of the case before it;
2. On a proper construction of the first sentence of Article 7(1) of Regulation No 6/2002, it is possible that an unregistered design may not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union, even though it was disclosed to third parties without any explicit or implicit conditions of confidentiality, if it has been made available to only one undertaking in that sector or has been presented only in the showrooms of an undertaking outside the European Union, which it is for the Community design court to assess, having regard to the circumstances of the case before it;
3. On a proper construction of the first subparagraph of Article 19(2) of Regulation No 6/2002, the holder of the protected design must bear the burden of proving that the contested use results from copying that design. However, if a Community design court finds that the fact of requiring that holder to prove that the contested use results from copying that design is likely to make it impossible or excessively difficult for such evidence to be produced, that court is required, in order to ensure observance of the principle of effectiveness, to use all procedures available to it under national law to counter that difficulty, including, where appropriate, rules of national law which provide for the burden of proof to be adjusted or lightened;
4. The defences of the extinction of rights over time and of an action being time-barred that may be raised against an action brought on the basis of Articles 19(2) and 89(1)(a) of Regulation No 6/2002 are governed by national law, which must be applied in a manner that observes the principles of equivalence and effectiveness;
5. On a proper construction of Article 89(1)(d) of Regulation No 6/2002, claims for the destruction of infringing products are governed by the law of the Member State in which the acts of infringement or threatened infringement have been committed, including its private international law. Claims for compensation for damage resulting from the activities of the person responsible for the acts of infringement or threatened infringement and for disclosure, in order to determine the extent of that damage, of information relating to those activities, are governed, pursuant to Article 88(2) of that regulation, by the national law of the Community design court hearing the proceedings, including its private international law.

Judgment of the Court (Third Chamber) of 6 February 2014 (request for a preliminary ruling from the Tribunal Central Administrativo Norte, Portugal) — IPTM-Instituto Português e dos Transportes Marítimos v Navileme — Consultadoria Náutica, Lda, Nautizende — Consultadoria Náutica, Lda

(Case C-509/12) ⁽¹⁾

(Reference for a preliminary ruling — Article 52 and Article 56 TFEU — Freedom to provide services — Grant of a recreational boating licence — Condition of residency in the issuing country — Restriction for non-residents — Maintaining maritime safety — Public policy)

(2014/C 93/20)

Language of the case: Portuguese

Referring court

Tribunal Central Administrativo Norte

Parties to the main proceedings

Applicant: IPTM-Instituto Português e dos Transportes Marítimos

Defendant: Navileme — Consultadoria Náutica, Lda, Nautizende — Consultadoria Náutica, Lda

Re:

Request for a preliminary ruling — Tribunal Central Administrativo Norte — Portugal — Interpretation of Articles 18, 20, 45, 52 and 62 TFEU — Discrimination on grounds of nationality — Free movement of persons and freedom to provide services — Restrictions — Provision imposing a condition of residency within the national territory for the grant of a recreational boating licence.

Operative part of the judgment

Article 52 and Article 56 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which imposes a condition of residence within the national territory for European Union citizens seeking to obtain a recreational boating licence in that Member State.

⁽¹⁾ OJ C 32, 2.2.2013.

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