

Parties to the main proceedings

Appellant: Trianon Productie BV

Respondent: Revillon Chocolatier SAS

Questions referred

1. As regards the grounds for refusal or invalidity in Article 3(1)(e)(iii) of Directive 89/104/EEC, ⁽¹⁾ as codified in Directive 2008/95 ⁽²⁾ — according to which (shape) marks cannot consist exclusively of a shape which gives a substantial value to the goods — do these concern the reason (or reasons) for the purchasing decision of the relevant public?
2. Is a shape a ‘shape which gives substantial value to the goods’ within the meaning of the provision referred to above
 - (a) only if that shape must be regarded as the main or overriding value in comparison with other values (such as, in the case of foods, their taste or substance); or
 - (b) also where the goods have other values, which must be regarded as equally substantial, in addition to that main or overriding value?
3. Is the answer to Question 2 to be determined on the basis of the view of the majority of the target public, or can the courts rule that the view of just part of that public is sufficient for the value concerned to be deemed ‘substantial’ within the meaning of the provision referred to above?
4. In so far as the answer to Question 3 falls to be answered as indicated in the latter part of that question, what requirement is to be applied as regards the size of the relevant part of the public?

⁽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 2008 L 299, p. 25.

Reference for a preliminary ruling from the Juzgado de lo Social de Lleida (Spain) lodged on 3 January 2012 — Marc Betriu Montull v Instituto Nacional de la Seguridad Social (INSS)

(Case C-5/12)

(2012/C 98/16)

Language of the case: Spanish

Referring court

Juzgado de lo Social de Lleida

Parties to the main proceedings

Applicant: Marc Betriu Montull

Defendant: Instituto Nacional de la Seguridad Social (INSS)

Questions referred

1. Does a national law, specifically Article 48(4) of the Estatuto de los Trabajadores, which, in the case of childbirth, recognises employed mothers as holders of a primary and separate right to maternity leave once the six week period following the birth has elapsed, except in cases where the mother’s health is at risk, and employed fathers as holders of a secondary right, which can be enjoyed only where the mother also has the status of an employed person and elects for the father to take a designated part of that leave, contravene Council Directive 76/207/EEC ⁽¹⁾ and Council Directive 96/34/EC? ⁽²⁾
2. Does a national law, specifically Article 48(4) of the Estatuto de los Trabajadores, which, in the case of childbirth, recognises the primary right of mothers, but not of fathers, to suspend their contract of employment and to return to the same job, paid for by the social security system, even once the six week period following the birth has elapsed, except in cases where the mother’s health is at risk, so that the taking of leave by a male employee is dependent on the child’s mother also having the status of an employed person, contravene the principle of equal treatment, which prohibits discrimination on grounds of sex?
3. Does a national law, specifically Article 48(4) of the Estatuto de los Trabajadores, which recognises employed fathers as holders of a primary right to suspend their contract of employment and to return to the same job, paid for by the social security system, when they adopt a child but, by contrast, when they have a child by birth, does not give employed fathers their own separate right, independent of that of the mother, to suspend the contract, recognising only a right deriving from that of the mother, contravene the principle of equal treatment, which prohibits discrimination?

⁽¹⁾ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) (Spanish special edition: Chapter 5, Volume 2 p. 70).

⁽²⁾ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4).