

Pleas in law and main arguments

The appellant alleges that the General Court of the European Union infringed Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) ⁽¹⁾ by failing to have regard to the legal criteria of essential importance for the application of that provision, and by committing manifest errors in the assessment of those criteria in the circumstances of the present case.

Thus, the appellant alleges that the General Court did not apply correctly the interpretation relating to the criterion of the average consumer, a test which is relevant on the facts of the present case. The appellant further alleges that the General Court misappraised the inherent distinctive character of the earlier marks FEMINATAL, although the appellant submitted in its application to the General Court that the Board of Appeal of OHIM did not examine that question diligently and exhaustively. The appellant also takes the view that the General Court misappraised the trade marks' visual and conceptual similarity. Finally, the appellant alleges that the General Court misappraised the likelihood of deceiving the average consumer.

Furthermore, the appellant alleges that the General Court infringed Article 9 of the Treaty on European Union through the application of other legal criteria in similar cases.

⁽¹⁾ OJ 2009 L 78, p. 1.

Reference for a preliminary ruling from the Tribunale di Milano (Italy) lodged on 26 July 2012 — Nintendo Co., Ltd and Others v PC Box Srl and 9Net Srl

(Case C-355/12)

(2012/C 295/41)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicants: Nintendo Co., Ltd, Nintendo of America Inc., Nintendo of Europe GmbH

Defendants: PC Box Srl, 9Net Srl

Questions referred

1. Must Article 6 of Directive 2001/29/EC ⁽¹⁾ be interpreted, including in the light of recital 48 in the preamble thereto, as meaning that the protection of technological protection measures attaching to copyright-protected works or other subject matter may also extend to a system, produced and marketed by the same undertaking, in which a device is installed in the hardware which is capable of recognising on a separate housing mechanism containing the

protected works (videogames produced by the same undertaking as well as by third parties, proprietors of the protected works) a recognition code, in the absence of which the works in question cannot be visualised or used in conjunction with that system, the equipment in question thus incorporating a system which is not interoperable with complementary equipment or products other than those of the undertaking which produces the system itself?

2. Should it be necessary to consider whether or not the use of a product or component whose purpose is to circumvent a technological protection measure predominates over other commercially important purposes or uses, may Article 6 of Directive 2001/29/EC be interpreted, including in the light of recital 48 in the preamble thereto, as meaning that the national court must adopt criteria in assessing that question which give prominence to the particular intended use attributed by the right holder to the product in which the protected content is inserted or, in the alternative or in addition, criteria of a quantitative nature relating to the extent of the uses under comparison, or criteria of a qualitative nature, that is, relating to the nature and importance of the uses themselves?

⁽¹⁾ OJ 2001 L 167, p. 10.

Reference for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 31 July 2012 — Carratù v Poste Italiane SpA

(Case C-361/12)

(2012/C 295/42)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Carmela Carratù

Defendant: Poste Italiane SpA

Questions referred

1. Is a provision of national law which, in giving effect to Directive 1999/70/EC, ⁽¹⁾ provides for economic consequences in cases of unlawful suspension of a contract of employment, with a null and void time-limit clause, that are different from and considerably less favourable than those in cases of unlawful suspension of a contract governed by the ordinary civil law with a null and void time-limit clause, contrary to the principle of equivalence?