Reference for a preliminary ruling from the Oberster Patent- und Markensenat (Austria) lodged on 6 September 2012 — Backaldrin Österreich The Kornspitz Company GmbH v Pfahnl Backmittel GmbH

(Case C-409/12)

(2012/C 399/14)

Language of the case: German

Referring court

Oberster Patent- und Markensenat

Parties to the main proceedings

Applicant: Backaldrin Österreich The Kornspitz Company GmbH

Defendant: Pfahnl Backmittel GmbH

Questions referred

1. Has a trade mark become 'the common name. for a product or service' within the meaning of Article 12(2)(a) of Directive 2008/95/EC, ([1]) where

   (a) although traders know that the mark constitutes an indication of origin they do not generally disclose this to end consumers, and

   (b) (inter alia) on those grounds, end consumers no longer understand the trade mark as an indication of origin but as the common name for goods or services, in respect of which the trade mark is registered?

2. Can the conduct of a proprietor be regarded as 'inactivity' for the purposes of Article 12(2)(a) of Directive 2008/95/EC simply if the proprietor of the trade mark remains inactive notwithstanding the fact that traders do not inform customers that the name is a registered trade mark?

3. If, as a consequence of acts or inactivity of the proprietor, a trade mark has become a common name for end consumers, but not in the trade, is that trade mark liable to be revoked if, and only if, end consumers have to use this name because there are no equivalent alternatives?

([1]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version), (OJ 2008 L 299, p. 25).

Reference for a preliminary ruling from the Gerechtshof te 's-Hertogenbosch (Netherlands), lodged on 18 September 2012 — X; Other party: Voorzitter van het managementteam van het onderdeel Belastingdienst/Z van de rijksbelastingdienst

(Case C-426/12)

(2012/C 399/15)

Language of the case: Dutch

Referring court

Gerechtshof te 's-Hertogenbosch

Parties to the main proceedings

Appellant: X

Other party: Voorzitter van het managementteam van het onderdeel Belastingdienst/Z van de rijksbelastingdienst

Questions referred

1. Is there dual use within the meaning of Article 2(4)(b) of Directive 2003/96/EC ([1]) in the case where coal (products within the CN codes 2701, 2702 and 2704) is used as heating fuel in a lime kiln, while the carbon dioxide generated in that lime kiln from the coal (and limestone) is used for the production of lime-kiln gas, which is subsequently used in, and is indispensable for, the purification of the raw juice obtained from sugar beet?

2. Is there dual use within the meaning of Article 2(4)(b) of Directive 2003/96/EC in the case where coal (products within the CN codes 2701, 2702 and 2704) is used as heating fuel, while 66 % of the carbon dioxide generated during the heating and taken up by the lime-kiln gas is absorbed, during the subsequent purification referred to above, by earth foam, which is sold as lime fertiliser to the agricultural sector?

3. In the event that there is dual use within the meaning of Article 2(4)(b) of Directive 2003/96/EC: having regard to the (literal) text of the opening words of Article 2(4) of Directive 2003/96/EC, is that directive not applicable, with the result that the appellant cannot rely (for the interpretation in national legislation of the concept of dual use as referred to in Article 20(e) Wbm ([2])) on the direct effect of that directive?

4. In the event that there is dual use within the meaning of Article 2(4)(b) of Directive 2003/96/EC and the latter is (consequently) inapplicable: in the case of the levying of a