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

tax such as the present fuel tax, does European Union law preclude a more restrictive interpretation of the concept of dual use under domestic law as compared with an interpretation in accordance with Directive 2003/96/EC?

(1) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).
(2) Wet belastingen op milieugrondslag (Netherlands Law introducing taxes for the protection of the environment).

Reference for a preliminary ruling from the Curtea de Apel Bacău (Romania) lodged on 21 September 2012 — Elena Luca v Casa de Asigurări de Sănătate Bacău

(Case C-430/12)

(2012/C 399/16)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicant: Elena Luca

Defendant: Casa de Asigurări de Sănătate Bacău

Questions referred

1. Do Article 56 [TFEU] (formerly Article 49 of the EC Treaty) and Article 22 of Regulation No 1408/71 (1) preclude national legislation, such as Articles 40(1)(b), 45 and 46 of Decree 592/2008, under which an employed or self-employed person, or a member of that person's family, is not entitled to full reimbursement of expenses incurred in respect of medical treatment abroad unless he has obtained prior authorisation for those purposes?

2. Does partial payment for medical treatment carried out within the Community, calculated in accordance with the rates of the insuring Member State — in the present case, in accordance with Article 7a of Decree 122/2007 (now repealed by Decree 729/2009) — constitute a restriction for the purposes of Article 56 [TFEU] (formerly Article 49 of the EC Treaty)?

3. If Question 2 is answered in the affirmative, what is the threshold for the reimbursement of expenses incurred by insured persons, in the event of a discrepancy in amount between the payments provided for under the legislation of the Member State of residence and the cost of the services provided for under the legislation of the Member State in which the treatment was carried out?

(1) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (English Special Edition, Series I, 1971(II), pp. 416 to 463).

Reference for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania), lodged on 24 September 2012 — Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili v SC Rafinăria Steaua Română SA

(Case C-431/12)

(2012/C 399/17)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Appellants in cassation: Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili

Respondent in cassation: SC Rafinăria Steaua Română SA

Question referred

Is it contrary to Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (1) if Article 124 of the Romanian Tax Procedure Code is interpreted as meaning that the State is not liable for payment of interest on amounts claimed under VAT declarations in respect of the period between the date of set-off of those amounts and the date on which those set-off decisions are annulled by a national court?

(1) OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 26 September 2012 — ACI Adam BV and Others v Stichting de Thuiskopie and Others

(Case C-435/12)

(2012/C 399/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: ACI Adam BV, Alpha International BV, AVC Nederland BV, BAS Computers & Componenten BV, Despec BV, Dexxon Data Media and Storage BV, Fuji Magnetics Nederland, Imation Europe BV, Maxell Benelux BV, Philips Consumer Electronics BV, Sony Benelux BV, Verbatim GmbH