

similar. In addition, the conditions for the application of Article 8(5) CTMR 2009 are also fulfilled in the present case, as the earlier registrations enjoy a reputation in Spain in respect of articles related to fashion and the use of a similar sign by a third party would be detrimental to, and take unfair advantage of, such reputation.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, p. 1

Request for a preliminary ruling from the Amtsgericht Winsen (Luhe) (Germany) lodged on 17 December 2012
— Andrea Merten v ERGO Lebensversicherung AG

(Case C-590/12)

(2013/C 46/31)

Language of the case: German

Referring Court

Amtsgericht Winsen (Local Court, Winsen) (Luhe)

Parties in the main proceedings

Applicant: Andrea Merten

Defendant: ERGO Lebensversicherung AG

Question referred

Should Article 15(1), first sentence, of Directive 90/619/EEC, ⁽¹⁾ in consideration of Article 31(1) of Directive 92/96/EEC ⁽²⁾ as amended by Articles 35 and 36, in conjunction with Article 32, of Directive 2002/83/EC, ⁽³⁾ be interpreted as meaning that it precludes a provision — such as Article 5a(2), fourth indent, of the German Insurance Contracts Act (VVG), as amended by the third Law transposing the Directives of the Council of the European Communities on insurance law of 21 July 1994 — under which the insurance policy holder's right to withdrawal or objection expires, at the latest, one year after the payment of the first insurance premium, even if the policy holder was not adequately informed of the right to withdrawal or objection?

⁽¹⁾ Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (Second Life Assurance Directive) (OJ 1990 L 330, p. 50).

⁽²⁾ Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1).

⁽³⁾ Directive 2002/83/EC of the European Parliament and of the Council of 05 November 2002 concerning life assurance (OJ 2002 L 345, p. 1).