

Questions referred

1. Must clause 5(1) of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP annexed to Council Directive No 1999/70/EC⁽¹⁾ be interpreted as precluding the application of Article 4(1) *in fine* and (11) of Law No 124 of 3 May 1999 adopting urgent provisions concerning school employees (Legge No 124, disposizioni urgenti in materia di personale scolastico) which, after laying down rules on the allocation of annual replacements for 'posts that are in fact vacant and free by 31 December', goes on to provide that this is to be done by allocating annual replacements 'pending the completion of competition procedures for the recruitment of permanent members of the teaching staff' — a provision that permits fixed-term contracts to be used without a definite period being fixed for completing the competition, and in a clause that provides no right to compensation for damage?
2. Do the requirements of the organisation of the Italian school system set out above constitute objective reasons within the meaning of clause 5(1) of Directive No 1999/70/EC of 28 June 1999 of such a kind as to render compatible with the law of the European Union legislation, such as the Italian legislation, that does not provide a right to compensation for damage in respect of the appointment of school staff on fixed-term contracts?

⁽¹⁾ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

**Request for a preliminary ruling from the
Bundespatentgericht (Germany) lodged on 24 July 2013
— Netto Marken Discount AG & Co. KG v Deutsches
Patent- und Markenamt**

(Case C-420/13)

(2013/C 313/14)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: Netto Marken Discount AG & Co. KG

Defendant: Deutsches Patent- und Markenamt

Questions referred

1. Is Article 2 of the directive⁽¹⁾ to be interpreted as meaning that a service within the meaning of this provision also encompasses retail trading in services?

2. If the answer to the first question is in the affirmative:

Is Article 2 of the directive to be interpreted as meaning that the content of the services offered by the retailer must be specified in exactly the same way as the goods that a retailer markets?

- (a) Does it suffice for the purposes of specification of the services if
 - (aa) just the field of services in general or general indications,
 - (bb) just the class(es) or
 - (cc) each specific individual service
 is stated?
- (b) Do these details then take part in determining the date of filing or is it possible, where general indications or classes are stated, to make substitutions or additions?

3. If the answer to the first question is in the affirmative:

Is Article 2 of the directive to be interpreted as meaning that the scope of trade mark protection afforded to retail services extends even to services rendered by the retailer himself?

⁽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 (OJ 2008 L 299, p. 25).

**Request for a preliminary ruling from the
Bundespatentgericht (Germany) lodged on 24 July 2013
— Apple, Inc. v Deutsches Patent- und Markenamt**

(Case C-421/13)

(2013/C 313/15)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: Apple, Inc.

Defendant: Deutsches Patent- und Markenamt

Questions referred

1. Is Article 2 of the Directive⁽¹⁾ to be interpreted as meaning that the possibility of protection for the 'packaging of goods' also extends to the layout in which a service is incorporated?

2. Are Articles 2 and 3(1) of the Directive to be interpreted as meaning that a sign representing the layout in which the service is incorporated is capable of being registered as a trade mark?
3. Is Article 2 of the Directive to be interpreted as meaning that the requirement of graphic representability is satisfied by a drawn representation alone or with such additions as a description of the layout or indications of absolute dimensions in metres or of relative dimensions with indications as to proportions?
4. Is Article 2 of the Directive to be interpreted as meaning that the scale of the protection afforded by a trade mark for retail services also extends to the goods produced by the retailer itself?

(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 (OJ 2008 L 299, p. 25).

Request for a preliminary ruling from the Consiglio di Stato/Italy lodged on 26 July 2013 — Ministero dell'Economia e delle Finanze, Amministrazione Autonoma dei Monopoli di Stato (AAMS) v Yesmoke Tobacco SpA

(Case C-428/13)

(2013/C 313/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Ministero dell'Economia e delle Finanze, Amministrazione Autonoma dei Monopoli di Stato (AAMS)

Defendant: Yesmoke Tobacco SpA

Question referred

Do Article 8(2) of Directive 95/59/EC (¹) of 27 December 1995 and Article 7(2) of Directive 2011/64/EU (²) of 21 June 2011, by providing, respectively, that the proportional rate and ad valorem rate, and the amount of the specific excise duty, 'must be the same for all cigarettes', preclude a provision of national law such as Article 39g(4) of Legislative Decree No 504 of 26 October 1995 (as amended by Article 55(2a)[(c)] of Decree-Law No 78 of 31 May 2010, converted, with amendments, in Law No 122 of 30 July 2010), which provides that

the excise duty payable on cigarettes with a retail selling price less than that of cigarettes in the most popular price category is to be 115 % of the basic amount, thereby establishing an excise duty at a fixed minimum rate specific to cigarettes with a lower selling price and not a minimum amount of excise duty for all price categories of cigarettes, as permitted by Article 16(7) of Directive 95/59/EC and Article 14(2) of Directive 2011/64/EU?

(¹) Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40).

(²) Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24).

Appeal brought on 1 August 2013 by European Commission against the judgment of the General Court (First Chamber) delivered on 17 May 2013 in Case T-146/09: Parker ITR Srl and Parker-Hannifin Corp v Commission

(Case C-434/13 P)

(2013/C 313/17)

Language of the case: English

Parties

Appellant: European Commission (represented by: S. Noë, V. Bottka, R. Sauer, Agents)

Other parties to the proceedings: Parker ITR Srl, Parker-Hannifin Corp.

Form of order sought

The appellant claims that the Court should:

- set aside the Judgment insofar as it annuls the Decision and adjusts the fine;
- dismiss the action before the General Court in its entirety;
- require the Applicants to bear the entirety of the costs of these proceedings and those of the proceedings at first instance.

Pleas in law and main arguments

The Commission raises two grounds of appeal, and requests the Judgment to be partially set aside insofar as it annuls the Decision in Case COMP/39406 — Marine Hoses and adjusts the fine.