

It is for the national court to determine whether that condition is satisfied and whether the tariff obligation is objective, transparent, proportionate, non-discriminatory, based on the nature of the problem identified and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, and whether the procedures laid down in Articles 6, 7 and 7a of Directive 2002/21, as amended by Directive 2009/140, have been followed.

- 2) EU law must be interpreted as meaning that a Member State may provide that a tariff obligation under Article 28 of Directive 2002/22, as amended by Directive 2009/136, such as that at issue in the main proceedings, be imposed by a national authority other than the national regulatory authority usually responsible for applying the European Union's new regulatory framework for electronic communications networks and services, provided that that authority satisfies the conditions of competence, independence, impartiality and transparency required by Directive 2002/21, as amended by Directive 2009/140, and that the decisions which it takes can form the subject of an effective appeal to a body independent of the interested parties, this being a matter for the referring court to determine.

⁽¹⁾ OJ C 151, 19.5.2014.

Judgment of the Court (First Chamber) of 16 September 2015 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Société des Produits Nestlé SA v Cadbury UK Ltd

(Case C-215/14) ⁽¹⁾

(Reference for a preliminary ruling — Trade marks — Directive 2008/95/EC — Article 3(3) — Concept of ‘distinctive character acquired through use’ — Three-dimensional mark — Kit Kat four finger chocolate-coated wafer — Article 3(1)(e) — Sign which consists of both the shape which results from the nature of the goods themselves and the shape which is necessary to obtain a technical result — Manufacturing process included in the technical result)

(2015/C 371/12)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Société des Produits Nestlé SA

Defendant: Cadbury UK Ltd

Operative part of the judgment

1. Article 3(1)(e) of 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 must be interpreted as precluding registration as a trade mark of a sign consisting of the shape of goods where that shape contains three essential features, one of which results from the nature of the goods themselves and two of which are necessary to obtain a technical result, provided, however, that at least one of the grounds for refusal of registration set out in that provision is fully applicable to the shape at issue.

2. Article 3(1)(e)(ii) of Directive 2008/95, under which registration may be refused of signs consisting exclusively of the shape of goods which is necessary to obtain a technical result, must be interpreted as referring only to the manner in which the goods at issue function and it does not apply to the manner in which the goods are manufactured.
3. In order to obtain registration of a trade mark which has acquired a distinctive character following the use which has been made of it within the meaning of Article 3(3) of Directive 2008/95, regardless of whether that use is as part of another registered trade mark or in conjunction with such a mark, the trade mark applicant must prove that the relevant class of persons perceive the goods or services designated exclusively by the mark applied for, as opposed to any other mark which might also be present, as originating from a particular company.

⁽¹⁾ OJ C 235, 21.7.2014.

Judgment of the Court (Ninth Chamber) of 17 September 2015 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — Corina van der Lans v Koninklijke Luchtvaart Maatschappij NV

(Case C-257/14) ⁽¹⁾

(Reference for a preliminary ruling — Air transport — Passengers' rights in the event of delay or cancellation of a flight — Regulation (EC) No 261/2004 — Article 5(3) — Denied boarding and cancellation — Long flight delay — Compensation and assistance to passengers — Extraordinary circumstances)

(2015/C 371/13)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: Corina van der Lans

Defendant: Koninklijke Luchtvaart Maatschappij NV

Operative part of the judgment

Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as meaning that a technical problem, such as that at issue in the main proceedings, which occurred unexpectedly, which is not attributable to poor maintenance and which was also not detected during routine maintenance checks, does not fall within the definition of 'extraordinary circumstances' within the meaning of that provision.

⁽¹⁾ OJ C 303, 8.9.2014.