

19 January 1999 received at the Court Registry on 1 April 1999 for a preliminary ruling in the case of Toshiba Europe GmbH against Katun Germany GmbH on the following question:

1. Is an advertisement by a supplier of replacement parts and user materials for an appliance manufacturer's product to be regarded as comparative advertising within the meaning of Article 2(2a) of the directive if the advertisement states the appliance manufacturer's product numbers (OEM numbers) for the relevant original replacement parts and consumables for reference purposes to identify the supplier's products?
2. If Question 1 is to be answered in the affirmative:
 - (a) Does displaying the appliance manufacturer's product numbers (OEM numbers) alongside the supplier's own order numbers amount to a lawful comparison of the goods under Article 3a(l)(c) of the directive, and in particular a comparison of the prices?
 - (b) Are the product numbers (OEM numbers) 'distinguishing marks of a competitor' within the meaning of Article 3a(l)(g)?
3. If Question 2 is to be answered in the affirmative:
 - (a) What are the criteria to be used when assessing whether an advertisement within the meaning of Article 2(2a) takes unfair advantage of the reputation of a distinguishing mark of a competitor within the meaning of Article 3a(l)(g)?
 - (b) Is the fact that the appliance manufacturer's product numbers (OEM numbers) appear alongside the supplier's own order numbers sufficient to justify an allegation that unfair advantage is being taken of the reputation of the distinguishing mark of a competitor under Article 3a(1)(g), if the third party competitor could instead in each case indicate the product for which the replacement part or consumable is suitable?
 - (c) When assessing unfairness, is it relevant whether a reference (solely) to the product for which the consumable or replacement part is suitable — in lieu of a reference to the product number (OEM number) — is likely to make it difficult to sell the supplier's products, particularly because customers generally take their bearings from the appliance manufacturer's product numbers (OEM numbers)?

Reference for a preliminary ruling by the Verwaltungsgerichtshof, Vienna, Austria, by order of that court of 17 March 1999 in the case of Dr Herta Schmid as insolvency administrator of the assets of the company P.P. Handels GmbH (in liquidation) against Finanzlandesdirektion für Wien, Niederösterreich und Burgenland

(Case C-113/99)

(1999/C 188/20)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Administrative Court), Vienna, Austria, of 17 March 1999, received at the Court Registry on 6 April 1999, for a preliminary ruling in the case of Dr Herta Schmid as insolvency administrator of the assets of the company P.P. Handels GmbH (in liquidation) against Finanzlandesdirektion für Wien, Niederösterreich und Burgenland on the following question:

Does Article 10 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital⁽¹⁾ preclude the levying for 1996 of the tax provided for by Paragraph 24(4) of the 1988 Körperschaftsteuergesetz (Corporation Tax law) as amended by Federal law BGBl (Bundesgesetzblatt, Federal Law Gazette) No 680/1994?

⁽¹⁾ OJ 1969 L 249, p. 25.

Reference for a preliminary ruling by the Cour Administrative d'Appel (Administrative Appeal Court), Nancy (First Chamber), by judgment of that court of 25 March 1999 in the case of Roquette Frères SA against Office National Interprofessionnel des Céréales (O.N.I.C.)

(Case C-114/99)

(1999/C 188/21)

Reference has been made to the Court of Justice of the European Communities by judgment of the Cour Administrative d'Appel, Nancy (First Chamber) of 25 March 1999, received at the Court Registry on 6 April 1999, for a preliminary ruling in the case of Roquette Frères SA v Office National Interprofessionnel des Céréales (O.N.I.C.) on the following question:

Did the provisions in force on 1 March 1990 and, in particular, Article 5(1) of Commission Regulation No 3665/87 of 27 November 1987⁽¹⁾, in so far as it provides that the export refund is to be paid only if 'the product has been actually placed on the market in the non-member country of import in the unaltered state', permit the body responsible for supervision (in this instance, the O.N.I.C.) to challenge the supplier's entitlement to refunds on the sole ground that the goods delivered had been used by its foreign customer in the preparation of another product, which was itself liable to be re-exported to other Member States of the European Economic Community?

⁽¹⁾ Laying down detailed rules for the application of the system of export refunds on agricultural products.