

An action for rescission of a contract for the sale of land and consequential damages is not within the scope of the rules on exclusive jurisdiction in proceedings which have as their object rights in rem in immovable property under Article 16(1) of the Convention of 27 September 1968 between the Member States of the European Economic Community on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Convention of 9 October 1978 on the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland and by the Convention of 25 October 1982 on the accession of the Hellenic Republic.

(¹) OJ C 63 of 4.3.2000

ORDER OF THE COURT

of 2 May 2001

in Case C-307/99 (reference for a preliminary ruling from the Finanzgericht Hamburg, Germany): OGT Fruchthandels-gesellschaft mbH v Hauptzollamt Hamburg-St. Annen(¹)

(Article 104(3) of the Rules of Procedure — Bananas — Common organisation of the market — GATT — Direct effect — First paragraph of Article 234 of the EC Treaty (now, after amendment, first paragraph of Article 307 EC))

(2001/C 200/67)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-307/99: reference to the Court under Article 234 EC from the Finanzgericht (Finance Court) Hamburg for a preliminary ruling in the proceedings pending before that court between OGT Fruchthandels-gesellschaft mbH and Hauptzollamt Hamburg-St. Annen — on the interpretation of Articles I and XIII of the General Agreement on Tariffs and Trade 1994, in Annex 1A to the Agreement establishing the World Trade Organisation, approved on behalf of the European Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994 (OJ 1994 L 336, p. 1) — the Court, composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen (Rapporteur), F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges; A. Tizzano, Advocate General; R. Grass, Registrar, has made an order on 2 May 2001, in which it has ruled:

Articles I and XIII of the General Agreement on Tariffs and Trade 1994, in Annex 1A to the Agreement establishing the World Trade Organisation, approved on behalf of the European Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994, are not such as to create rights which individuals may rely on directly before a national court in order to oppose the application of the second subparagraph of Article 18(1) of Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas, as amended by Council Regulation (EC) No 1637/98 of 20 July 1998.

(¹) OJ C 299 of 16.10.1999

ORDER OF THE COURT

(Fifth Chamber)

of 10 May 2001

in Case C-345/00 P: Fédération Nationale d'Agriculture Biologique des Régions de France (FNAB) and Others v Council of the European Union(¹)

(Appeal — Regulation (EEC) No 1804/1999 — Prohibition of using indications suggesting an organic method of production in the labelling and advertising of products not obtained by that production method — Temporary derogation for existing trade-marks — Application for annulment — Inadmissible — Appeal manifestly unfounded)

(2001/C 200/68)

(Language of the case: French)

(Provisional translation: the definitive translation will be published in the Reports of Cases before the Court)

In Case C-345/00 P Fédération Nationale d'Agriculture Biologique des Régions de France (FNAB), established in Paris, France, Syndicat Européen des Transformateurs et Distributeurs de Produits de l'Agriculture Biologique (SETRAB), established in Paris, France, Est Distribution Biogam Sarl, established in Château-Salins, France, represented by the lawyer D. Leermakers and C. Hatton, Solicitor, with an address

for service in Luxembourg — appeal against the order of the Court of First Instance of the European Communities (Third Chamber) of 11 July 2000 in Case T-268/99 *Fédération Nationale d'Agriculture Biologique des Régions de France and Others v Council* [1999] ECR II-2893, seeking to have that order set aside, the other party to the proceedings being Council of the European Union (Agents F. Anton and J. Monteiro), the Court (Fifth Chamber), composed of A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward (Rapporteur), S. von Bahr and C.W.A. Timmermans, Judges, Advocate General: C. Stix-Hackl, R. Grass, Registrar, made an order on 10 May 2001, the operative part of which is as follows:

1. *The appeal is dismissed.*
2. *It is unnecessary to give a decision on the applications for leave to intervene.*
3. *Fédération Nationale d'Agriculture Biologique des Régions de France (FNAB), Syndicat Européen des Transformateurs et Distributeurs de Produits de l'Agriculture Biologique (SETRAB) and Est Distribution Biogam Sarl are to pay the costs.*
4. *CLESA SA, Danone SA and Compagnie Gervais Danone SA are to bear their own costs.*

(¹) OJ C 335 of 25.11.2000.

Reference for a preliminary ruling by the Hoge Raad, Netherlands, by order of that court of 23 February 2001 in the case of *Libertel Groep B.V. against Benelux-Merkenbureau*

(Case C-104/01)

(2001/C 200/69)

Reference has been made to the Court of Justice of the European Communities by order of the Hoge Raad (High Court), Netherlands, of 23 February 2001, received at the Court Registry on 5 March 2001, for a preliminary ruling in the case of *Libertel Groep B.V. against Benelux-Merkenbureau* on the following questions:

- (1) Is it possible for a single specific colour which is represented as such or is designated by an internationally applied body of rules to acquire a distinctive character for certain goods or services within the meaning of the opening words of Article 3(1) and of Article 3(b) of Council Directive 89/104/EEC of 21 December 1988 (¹)?
- (2) If the answer to the first question is in the affirmative:
 - (a) in what circumstances may it be accepted that a single specific colour possesses a distinctive character in the sense used above?
 - (b) does it make any difference if registration is sought for a wide range of goods and/or services, rather than for a specific product or service, or category of goods or services respectively?

- (3) In the assessment of the distinctive character of a specific colour as a trade mark, must account be taken of whether, with regard to that colour, there is a general interest in availability, such as can exist in respect of signs which denote a geographical origin?
- (4) When considering the question whether a sign, for which registration as a trade mark is sought, possesses the distinctive character referred to at the beginning of Article 3(1) and in Article 3(1)(b) of the Directive, must the BMB confine itself to an assessment *in abstracto* of distinctive character or must it take account of all the actual facts of the case, including the use made of the sign and the manner in which the sign is used?

(¹) OJ L 40 of 11.2.1989, p. 1.

Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of 29 March 2001 of that court in the case of *Cookies World Vertriebsges. m.b.H. i.L. v Finanzlandesdirektion für Tirol*

(Case C-155/01)

(2001/C 200/70)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Higher Administrative Court) of 29 March 2001, received at the Court Registry on 11 April 2001, for a preliminary ruling in the case of *Cookies World Vertriebsges. m.b.H. i.L. v Finanzlandesdirektion für Tirol* on the following question:

Is it compatible with the Sixth Council Directive 77/388/EEC of 17 May 1977 (¹) on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, in particular Articles 5 and 6 thereof, for a Member State to treat the following event as a taxable transaction: the incurring of expenditure relating to services supplied abroad that, if they had been supplied within the national territory to the trader, would not entitle the trader to a deduction of input tax?

(¹) OJ 1977 L 145, p. 1.