

JUDGMENT OF THE COURT

23 April 2002

in Case C-143/00 (Reference for a preliminary ruling from the High Court of Justice): Boehringer Ingelheim KG, Boehringer Ingelheim Pharma KG v Swingward Ltd, and between Boehringer Ingelheim KG, Boehringer Ingelheim Pharma KG and Dowelhurst Ltd, and between Glaxo Group Ltd and Swingward Ltd, and between Boehringer Ingelheim KG, Boehringer Ingelheim Pharma KG and Dowelhurst Ltd, and between Glaxo Group Ltd, The Wellcome Foundation Ltd and Dowelhurst Ltd, and between SmithKline Beecham plc, Beecham Group plc, SmithKline & French Laboratories Ltd and Dowelhurst Ltd and between Eli Lilly and Co. and Dowelhurst Ltd⁽¹⁾

(Trade marks — Directive 89/104/EEC — Article 7(2) — Exhaustion of the rights conferred by the trade mark — Pharmaceutical products — Parallel importation — Repackaging of the trade-marked product)

(2002/C 144/08)

(Language of the case: English)

In Case C-143/00: Reference to the Court under Article 234 EC by the High Court of Justice of England and Wales, Chancery Division (United Kingdom), for a preliminary ruling in the proceedings pending before that court between Boehringer Ingelheim KG, Boehringer Ingelheim Pharma KG and Swingward Ltd, and between Boehringer Ingelheim KG, Boehringer Ingelheim Pharma KG and Dowelhurst Ltd, and between Glaxo Group Ltd and Swingward Ltd, and between Boehringer Ingelheim KG, Boehringer Ingelheim Pharma KG and Dowelhurst Ltd, and between Glaxo Group Ltd, The Wellcome Foundation Ltd and Dowelhurst Ltd, and between SmithKline Beecham plc, Beecham Group plc, SmithKline & French Laboratories Ltd and Dowelhurst Ltd and between Eli Lilly and Co. and Dowelhurst Ltd, on the interpretation of Article 7(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), as amended by the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3), and of Articles 28 EC and 30 EC, the Court, composed of: G. C. Rodríguez Iglesias, President, P. Jann (President of Chamber), C. Gulmann (Rapporteur), D. A. O. Edward, M. Wathelet, R. Schintgen, V. Skouris, J. N. Cunha Rodrigues and C. W. A. Timmermans, Judges; F. G. Jacobs, Advocate General; D. Louterman-Hubeau, Head of Division, for the Registrar, has given a judgment on 23 April 2002, in which it has ruled:

1. Article 7(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member

States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, must be interpreted as meaning that a trade mark proprietor may rely on its trade mark rights in order to prevent a parallel importer from repackaging pharmaceutical products unless the exercise of those rights contributes to artificial partitioning of the markets between Member States.

2. Replacement packaging of pharmaceutical products is objectively necessary within the meaning of the Court's case-law if, without such repackaging, effective access to the market concerned, or to a substantial part of that market, must be considered to be hindered as the result of strong resistance from a significant proportion of consumers to relabelled pharmaceutical products.
3. A parallel importer must, in any event, in order to be entitled to repackage trade-marked pharmaceutical products, fulfil the requirement of prior notice. If the parallel importer does not satisfy that requirement, the trade mark proprietor may oppose the marketing of the repackaged pharmaceutical product. It is incumbent on the parallel importer himself to give notice to the trade mark proprietor of the intended repackaging. In the event of dispute, it is for the national court to assess, in the light of all the relevant circumstances, whether the proprietor had a reasonable time to react to the intended repackaging.

⁽¹⁾ OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

25 April 2002

in Case C-154/00: Commission of the European Communities v Hellenic Republic⁽¹⁾

(Failure by a Member State to fulfil its obligations — Directive 85/374/EEC — Product liability — Incorrect transposition)

(2002/C 144/09)

(Language of the case: Greek)

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

In Case C-154/00, Commission of the European Communities (Agent: M. Patakia) v Hellenic Republic (Agents: A. Samoni-