p. 1), the Court, composed of: J.-P. Puissochet, President of the Sixth Chamber, acting for the President, M. Wathelet and C. W. A. Timmermans, Presidents of Chambers, C. Gulmann, D. A. O. Edward, P. Jann, F. Macken, S. von Bahr and J. N. Cunha Rodrigues (Rapporteur), Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 6 May 2003, in which it has ruled:

1. *A colour per se, not spatially delimited, may, in respect of certain goods and services, have a distinctive character within the meaning of Article 3(1)(b) and Article 3(3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, provided that, inter alia, it may be represented graphically in a way that is clear, precise, self-contained, easily accessible, intelligible, durable and objective. The latter condition cannot be satisfied merely by reproducing on paper the colour in question, but may be satisfied by designating that colour using an internationally recognised identification code.*

2. *In assessing the potential distinctiveness of a given colour as a trade mark, regard must be had to the general interest in not unduly restricting the availability of colours for the other traders who offer for sale goods or services of the same type as those in respect of which registration is sought.*

3. *A colour per se may be found to possess distinctive character within the meaning of Article 3(1)(b) and Article 3(3) of Directive 89/104, provided that, as regards the perception of the relevant public, the mark is capable of identifying the product or service for which registration is sought as originating from a particular undertaking and distinguishing that product or service from those of other undertakings.*

4. *The fact that registration as a trade mark of a colour per se is sought for a large number of goods or services, or for a specific product or service or for a specific group of goods or services, is relevant, together with all the other circumstances of the particular case, to assessing both the distinctive character of the colour in respect of which registration is sought, and whether its registration would run counter to the general interest in not unduly limiting the availability of colours for the other operators who offer for sale goods or services of the same type as those in respect of which registration is sought.*

5. *In assessing whether a trade mark has distinctive character within the meaning of Article 3(1)(b) and Article 3(3) of Directive 89/104, the competent authority for registering trade marks must carry out an examination by reference to the actual situation, taking account of all the circumstances of the case and in particular any use which has been made of the mark.*

(1) OJ C 200 of 14.7.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 8 May 2003

in Case C-111/01 (Reference for a preliminary ruling from the Oberster Gerichtshof): Gantner Electronic GmbH v Basch Exploitatie Maatschappij BV (1)

(Brussels Convention — Article 21 — Lis pendens — Set-off)

(2003/C 146/11)

(Language of the case: German)

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

In Case C-111/01: Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Oberster Gerichtshof (Austria) for a preliminary ruling in the proceedings pending before that court between Gantner Electronic GmbH and Basch Exploitatie Maatschappij BV, on the interpretation of Article 21 of the abovementioned Convention of 27 September 1968 (OJ 1972 L 299, p. 32), 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 (OJ 1978 L 304, p. 1, and — amended text — p. 77), by the Convention of 25 October 1982 on the accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1), the Court (Fifth Chamber), composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, A. La Pergola, P. Jann and S. von Bahr, Judges; P. Léger, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

Article 21 of the Convention of 27 September 1968 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, by the Convention of 25 October 1982 on the accession of the Hellenic Republic, by the Convention of 26 May 1989 on the accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be construed as meaning that, in order to determine whether two claims brought between the same parties before the courts of different Contracting States have the same

subject-matter, account should be taken only of the claims of the respective applicants, to the exclusion of the defence submissions raised by a defendant.

(1) OJ C 134 of 5.5.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 8 May 2003

in Case C-113/01 (Reference for a preliminary ruling from the Högsta förvaltningsdomstolen): Paranova Oy (1)

(Interpretation of Article 28 EC and Article 30 EC — Medicinal products — Withdrawal of parallel import licence in consequence of waiver of the marketing authorisation for the medicinal product of reference)

(2003/C 146/12)

(Language of the case: Swedish)

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

In Case C-113/01: Reference to the Court under Article 234 EC by Högsta förvaltningsdomstolen (Finland) for a preliminary ruling in the proceedings pending before that court brought by Paranova Oy on the interpretation of Article 28 EC and Article 30 EC, the Court (Sixth Chamber), composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 8 May 2003, in which it has ruled:

Article 28 EC and Article 30 EC preclude national legislation under which the withdrawal, at the request of its holder, of a marketing authorisation of reference of itself entails the withdrawal of the parallel import licence granted for the medicinal product in question. However, those provisions do not preclude restrictions on parallel imports of the medicinal product in question where there is in fact a risk to the health of humans as a result of the continued existence of that medicinal product on the market of the importing Member State.

(1) OJ C 150 of 19.5.2001.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 3 April 2003

in Case C-116/01 (Reference for a preliminary ruling from the Raad van State): SITA EcoService Nederland BV, formerly Verol Recycling Limburg BV v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (1)

(Environment — Waste — Regulation (EEC) No 259/93 — Directive 75/442/EEC — Treatment of waste in several stages — Use of waste as fuel in the cement industry and use of incineration residues as raw material in cement manufacture — Classification as a recovery operation or as a disposal operation — Concept of the use of waste principally as a fuel or other means to generate energy)

(2003/C 146/13)

(Language of the case: Dutch)

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

In Case C-116/01: Reference to the Court under Article 234 EC by the Raad van State (Netherlands) for a preliminary ruling in the proceedings pending before that court between SITA EcoService Nederland BV, formerly Verol Recycling Limburg BV and Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), the Court (Fifth Chamber), composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, A. La Pergola (Rapporteur), P. Jann and A. Rosas, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 3 April 2003, in which it has ruled:

1. *Where a waste treatment process comprises several distinct stages, it must be classified as a disposal operation or a recovery operation within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and by Commission Decision 96/350/EC of 24 May 1996, for the purpose of implementing Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Council Regulation (EC) No 120/97 of 20 January 1997, taking into account only the first operation that the waste is to undergo subsequent to shipment;*