For the purposes of determining whether the ground for refusal set out in Article 3(1)(c) of Directive 89/104 applies to such a mark, it is irrelevant whether or not there are synonyms capable of designating the same characteristics of the goods or services referred to in the application for registration.

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(1) OJ C 233 of 12.8.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 5 February 2004

in Case C-95/01 (Reference for a preliminary ruling from the tribunal de grande instance de Paris): John Greenham v Léonard Abel (1)

(Free movement of goods — Articles 28 EC and 30 EC — Prohibition on marketing foodstuffs to which vitamins and minerals have been added — Justification — Proportionality)

(2004/C 85/04)

(Language of the case: French)

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

In Case C-95/01: Reference to the Court under Article 234 EC by the Tribunal de grande instance de Paris (France) for a preliminary ruling in the criminal proceedings pending before that court against John Greenham and Léonard Abel, on the interpretation of Articles 28 EC and 30 EC, the Court (Sixth Chamber), composed of: V. Skouris, acting for the President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, F. Macken (Rapporteur) and N. Colneric, Judges; J. Mischo, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 5 February 2004, in which it has ruled:

Articles 28 EC and 30 EC must be interpreted as meaning that they do not preclude a Member State from prohibiting the marketing without prior authorisation of foodstuffs lawfully manufactured and marketed in another Member State, where nutrients such as vitamins or minerals have been added thereto other than those whose use has been declared lawful in the first Member State, provided that certain conditions are satisfied.

First, the prior authorisation procedure must be readily accessible and capable of being completed within a reasonable time and, if it leads to a refusal, the decision of refusal must be open to challenge before the courts. Secondly, refusal to authorise marketing must be based on a detailed assessment of the risk to public health, based on the most reliable scientific data available and the most recent results of international research.

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(1) OJ C 108 of 7.4.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 12 February 2004

in Case C-218/01 (Reference for a preliminary ruling from the Bundespatentgericht (Germany): Henkel KGaA (1)

(Approximation of laws — Trade marks — Directive 89/104/EEC — Article 3(1)(b), (c) and (e) — Grounds for refusal to register — Three-dimensional shape-of-product mark — Distinctive character

(2004/C 85/05)

(Language of the case: German)

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

In Case C-218/01: reference to the Court under Article 234 EC by the Bundespatentgericht (Germany) for a preliminary ruling in the proceedings brought before that court by Henkel KGaA, on the interpretation of Article 3(1)(b), (c) and (e) 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), the Court (Sixth Chamber), composed of C. Gulmann, acting for the President of the Chamber, J. N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges; Advocate General: D. Ruíz-Jarabo Colomer, Registrar: L. Hewlett, Principal Administrator, has given a judgment on 12 February 2004, in which it ruled: