

- declare the applications to intervene lodged by the Hellenic Republic and the Portuguese Republic to be admissible; and
- order the Commission to pay the costs.

Grounds of appeal and main arguments

First ground of appeal: infringement of the principles of allocation of powers, loyalty and institutional balance, and misapplication of the conditions set out in Article 263 TFEU.

Second ground of appeal: infringement of the reciprocity of the principle of loyalty and undermining of the position of the Member State as a privileged applicant with a view to safeguarding its prerogatives.

Third ground of appeal: incorrect interpretation of the legal consequences of the recommendation with respect to Belgium.

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 18 January 2016 — Nintendo Co. Ltd v BigBen Interactive GmbH, BigBen Interactive S.A.

(Case C-24/16)

(2016/C 145/19)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Nintendo Co. Ltd

Defendants: BigBen Interactive GmbH, BigBen Interactive S.A.

Questions referred

1. In connection with a trial to enforce claims under a Community design, can the court of a Member State whose jurisdiction with respect to a defendant is based solely on Article 79(1) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs ⁽¹⁾ in conjunction with Article 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, ⁽²⁾ on the basis that this defendant, which is domiciled in another Member State, supplied the defendant domiciled in the pertinent Member State with goods that may infringe intellectual property rights, adopt measures against the first mentioned defendant that are applicable throughout the EU and extend beyond the supply relationships on which jurisdiction is based?
2. Is Regulation No 6/2002, particularly Article 20(1)(c), to be interpreted as meaning that a third party may depict a Community design for commercial purposes if it intends to sell accessory items for the right holder's goods corresponding to the Community design? If so, what criteria apply to this?
3. For the purposes of Article 8(2) of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations, ⁽³⁾ how is the place 'in which the act of infringement was committed' to be determined in cases in which the infringer
 - a) offers goods that infringe a Community design on a website and that website is also directed at Member States other than the one in which the person damaged by the infringement is domiciled, and/or

b) has goods that infringe a Community design shipped to a Member State other than the one in which it is domiciled?

Is Article 15(a) and (g) of Regulation No 864/2007 to be interpreted as meaning that the law determined in this manner is also applicable to participatory acts of other persons?

⁽¹⁾ OJ 2002 L 3, p. 1.

⁽²⁾ OJ 2001 L 12, p. 1.

⁽³⁾ OJ 2007 L 199, p. 40.

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 18 January 2016 — Nintendo Co. Ltd v BigBen Interactive GmbH, BigBen Interactive S.A.

(Case C-25/16)

(2016/C 145/20)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Nintendo Co. Ltd

Defendants: BigBen Interactive GmbH, BigBen Interactive S.A.

Questions referred

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 - b) has goods that infringe a Community design shipped to a Member State other than the one in which it is domiciled?