Judgment of the Court (Third Chamber) of 30 March 2006 (reference for a preliminary ruling from the High Court of Justice (Queen's Bench Division)) — Elizabeth Florence Emanuel v Continental Shelf 128 Ltd,

(Case C-259/04) ([1])

(Trade marks of such a nature as to deceive the public or liable to mislead the public as to the nature, quality or geographical origin of a product — Trade mark assigned by the proprietor together with the undertaking producing the goods to which the mark relates — Directive 89/104/EEC)

(2006/C 143/18)

Language of the case: English

Referring court

High Court of Justice (Queen's Bench Division)

Parties to the main proceedings

Applicant(s): Elizabeth Florence Emanuel

Defendant(s): Continental Shelf 128 Ltd,

Re:

Reference for a preliminary ruling — High Court of Justice (Queen's Bench Division) — Interpretation of Articles 3(1)(g) and 12(2)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks — Trade marks which are of such a nature as to deceive the public or to mislead it as to the nature, quality or geographical origin of a product — Trade mark assigned by the proprietor together with the undertaking producing the goods to which that mark relates — 'Elizabeth Emanuel' wedding dresses

Operative part of the judgment

1. *A trade mark corresponding to the name of the designer and first manufacturer of the goods bearing that mark may not, by reason of that particular feature alone, be refused registration on the ground that it would deceive the public, within the meaning of Article 3(1)(g) of Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, in particular where the goodwill associated with that trade mark, previously registered in a different graphic form, has been assigned together with the business making the goods to which the mark relates.*

2. *A trade mark corresponding to the name of the designer and first manufacturer of the goods bearing that mark is not, by reason of that particular feature alone, liable to revocation on the ground that that mark would mislead the public, within the meaning of Article 12(2)(b) of Directive 89/104, in particular where the goodwill associated with that mark has been assigned together with the business making the goods to which the mark relates.*

([1]) OJ C 217 28.8.2004.

Judgment of the Court (First Chamber) of 6 April 2006 (reference for a preliminary ruling from the Finanzgericht Hamburg) — ED & F Man Sugar Ltd v Hauptzollamt Hamburg-Jonas

(Case C-274/04) ([1])

(Agriculture — Regulation (EEC) No 3665/87 — Export refunds — Sanction applied following a decision to recover a refund that has become final — Possibility of re-examining the decision imposing a sanction)

(2006/C 143/19)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: ED & F Man Sugar Ltd

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg (Finance Court) Hamburg — Interpretation of Article 11(1) and (3) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1), as amended by Commission Regulation (EC) No 2945/94 of 2 December 1994 (OJ 1994 L 310, p. 57) — Sanctions for requesting a refund in excess of that applicable — Whether national authorities or courts may re-examine, in the context of an action brought by an exporter against a decision imposing a sanction on him, the final decision ordering repayment of amounts wrongly received — Misinterpretation of Community law

Operative part of the judgment

The first subparagraph of Article 11(1) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation No 2945/94 of 2 December 1994, must be interpreted as meaning that, in an appeal against a decision imposing a sanction on the basis of that provision, the national authorities and courts are entitled to examine whether the exporter requested a refund in excess of that applicable within the meaning of that provision, notwithstanding the fact that a reimbursement decision provided for in the first subparagraph of Article 11(3) of that Regulation has become final before the decision imposing a sanction was issued.

([1]) OJ C 228, 11.9.2004

Judgment of the Court (Grand Chamber) Chamber) of 2 May 2006 (reference for a preliminary ruling from the Supreme Court (Ireland)) Eurofood IFCS Ltd — Enrico Bondi v Bank of America N.A., Pearse Farrell, Official Liquidator, Director of Corporate Enforcement, Certificate/Note holders

(Case C-341/04) ([1])

(Judicial cooperation in civil matters — Regulation (EC) No 1346/2000 — Insolvency proceedings — Decision to open the proceedings — Centre of the debtor's main interests — Recognition of insolvency proceedings — Public policy (keywords)

(2006/C 143/20)

Language of the case: English

Referring court

Supreme Court (Ireland)

Parties to the main proceedings

Applicant: Enrico Bondi

Defendant(s): Bank of America N.A., Pearse Farrell, Official Liquidator, Director of Corporate Enforcement, Certificate/Note holders

Re:

Interpretation of Articles 1, 2, 3 and 16 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings — Order appointing a provisional liquidator pending a final order — Whether that order may be regarded as a judgment opening insolvency proceedings — Court with jurisdiction to open insolvency proceedings

Operative part of the judgment

1. *Where a debtor is a subsidiary company whose registered office and that of its parent company are situated in two different Member States, the presumption laid down in the second sentence of Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, whereby the centre of main interests of that subsidiary is situated in the Member State where its registered office is situated, can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which location at that registered office is deemed to reflect. That could be so in particular in the case of a company not carrying out any business in the territory of the Member State in which its registered office is situated. By contrast, where a company carries on its business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption laid down by that Regulation.*

2. *On a proper interpretation of the first subparagraph of Article 16(1) of Regulation No 1346/2000, the main insolvency proceedings opened by a court of a Member State must be recognised by the courts of the other Member States, without the latter being able to review the jurisdiction of the court of the opening State.*

3. *On a proper interpretation of the first subparagraph of Article 16(1) of the Regulation, a decision to open insolvency proceedings for the purposes of that provision is a decision handed down by a court of a Member State to which application for such a decision has been made, based on the debtor's insolvency and seeking the opening of proceedings referred to in Annex A to the Regulation, where that decision involves the divestment of the debtor and the appointment of a liquidator referred to in Annex C to the Regulation. Such divestment implies that the debtor loses the powers of management that he has over his assets.*

4. *On a proper interpretation of Article 26 of the Regulation, a Member State may refuse to recognise insolvency proceedings opened in another Member State where the decision to open the proceedings was taken in flagrant breach of the fundamental right to be heard, which a person concerned by such proceedings enjoys.*

([1]) OJ C 251, 9.10.2004.