

JUDGMENT OF THE COURT (Second Chamber)

20 January 2005 *

In Case C-27/02,

REFERENCE for a preliminary ruling 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 from the Oberlandesgericht Innsbruck (Austria), made by decision 14 January 2002, registered at the Court 31 January 2002, in the proceedings

Petra Engler

v

Janus Versand GmbH,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann and R. Schintgen (Rapporteur), Judges,

* Language of the case: German.

Advocate General: F.G. Jacobs,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing 26 May 2004,

after considering the observations submitted on behalf of:

- Ms Engler, by K.-H. Plankel and S. Ganahl, Rechtsanwälte,
- Janus Versand GmbH, by A. Matt, Rechtsanwalt,
- the Austrian Government, by C. Pesendorfer, acting as Agent, and A. Klauser, Rechtsanwalt,
- the Commission of the European Communities, by A.-M. Rouchaud and W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 July 2004,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 5(1) and (3) and Article 13, first paragraph, point 3, of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), 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 Brussels Convention').
- 2 The reference was made in the course of proceedings between Ms Engler, an Austrian national domiciled in Lustenau (Austria), and Janus Versand GmbH, a mail order company incorporated under German law established in Langenfeld (Germany), concerning an action for an order requiring Janus Versand to award Ms Engler a prize, since in a letter personally addressed to her it had given Ms Engler the impression that she had won a prize.

Legal background

The Brussels Convention

- 3 The rules on jurisdiction laid down by the Brussels Convention are set out in Title II, which consists of Articles 2 to 24.

- 4 The first paragraph of Article 2 of the Brussels Convention, which forms part of Title II, Section 1, entitled 'General provisions', sets out the basic rule in the following terms:

'Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.'

- 5 The first paragraph of Article 3 of the Brussels Convention, which appears in the same section, provides:

'Persons domiciled in a Contracting State may be sued in the courts of another Contracting State only by virtue of the rules set out in Sections 2 to 6 of this Title.'

- 6 Articles 5 to 18 of the Brussels Convention, which make up Sections 2 to 6 of Title II thereof, lay down rules governing special, mandatory or exclusive jurisdiction.
- 7 Thus, under Article 5, which appears in Section 2, entitled 'Special jurisdiction', of Title II of the Brussels Convention:

'A person domiciled in a Contracting State may, in another Contracting State, be sued:

- (1) in matters relating to a contract, in the courts for the place of performance of the obligation in question; ...

...

- (3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;

...'

- 8 Also under Title II of the Brussels Convention, Articles 13 to 15 form part of Section 4, entitled 'Jurisdiction over consumer contracts'.

9 Article 13 of the Brussels Convention is worded as follows:

'In proceedings concerning a contract concluded by a person for a purpose which can be regarded as being outside his trade or profession, hereinafter called "the consumer", jurisdiction shall be determined by this Section, without prejudice to the provisions of point 5 of Articles 4 and 5, if it is:

- (1) a contract for the sale of goods on instalment credit terms; or
- (2) a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
- (3) any other contract for the supply of goods or a contract for the supply of services, and
 - (a) in the State of the consumer's domicile the conclusion of the contract was preceded by a specific invitation addressed to him or by advertising; and
 - (b) the consumer took in that State the steps necessary for the conclusion of the contract.

Where a consumer enters into a contract with a party who is not domiciled in a Contracting State but has a branch, agency or other establishment in one of the Contracting States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

This section shall not apply to contracts of transport.’

- 10 The first paragraph of Article 14 of the Brussels Convention provides:

‘A consumer may bring proceedings against the other party to a contract either in the courts of the Contracting State in which that party is domiciled or in the courts of the Contracting State in which he is himself domiciled.’

- 11 That rule of jurisdiction may be departed from only if there is compliance with the conditions laid down in Article 15 of the Brussels Convention.

The relevant national provisions

- 12 Paragraph 5j of the Konsumentenschutzgesetz (Austrian Consumer Protection Law) (BGBl. I, 1979, p. 140) is worded as follows:

'Undertakings which send prize notifications or other similar communications to specific consumers, and by the wording of those communications give the impression that a consumer has won a particular prize, must give that prize to the consumer; it may also be claimed in legal proceedings.'

- 13 That provision was added to the Consumer Protection Law by Paragraph 4 of the Fernabsatz-Gesetz (Austrian Law on Distance Contracts) (BGBl. I, 1999, p. 185) when Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19) was transposed into Austrian law.
- 14 That provision entered into force on 1 October 1999.
- 15 The Oberlandesgericht Innsbruck states in its order for reference that the aim of Paragraph 5j is to grant a right of action to the consumer in order to bring proceedings to enforce a 'prize notification', where the consumer was misled on account of the fact that a business person, who contacted him personally, gave him the impression that he had won a prize, whereas the real aim of that action, to induce him to place an order for goods, only appears in small print or in an obscure part of the letter and in terms which are not easily comprehensible.

The dispute in the main proceedings and the question for a preliminary ruling

- 16 It is apparent from the case file in the main proceedings that at the beginning of 2001 Ms Engler received a letter personally addressed to her at her domicile from Janus Versand, which carries on business as a mail order company. That letter contained a 'payment notice', whose form and content led her to believe that she had won a prize of ATS 455 000 in a 'cash prize draw' organised by Janus Versand, and a catalogue of goods marketed by the latter (which apparently also called itself, in its relations with its customers, 'Handelskontor Janus GmbH') with a 'request for a trial without obligation'. In the advertising brochure sent to Ms Engler Janus Versand stated that it could also be contacted on the Internet at the following address: www.janus-versand.com.
- 17 On the 'payment notice' the word 'confirmation' appears in the title together with the winning number printed in bold characters. The name and address of the addressee and beneficiary of the payment notice are those of Ms Engler, and it is accompanied by the words 'personal — not transferable'. The 'payment notice' states, also in bold print, the amount of the prize in figures (ATS 455 000) and the same amount in letters underneath, together with a confirmation signed by a Mr Ulrich Mändercke, certifying that 'the amount of the prize stated is correct and in accordance with the document in our possession', the words 'chambers and office of certified and sworn experts' accompany that signature. Furthermore, Ms Engler was requested to affix to the 'payment notice', in the space provided for that purpose, the 'official stamp of the chambers' accompanying the letter and to return the request for the 'trial without obligation' to Janus Versand. A box for the date and signature, a request to 'fill it in' and a reference in small print to the terms and conditions and the award of the prize supposedly won also feature on the 'payment notice'. Ms Engler had to declare on the 'payment notice' that she had read and accepted those conditions. Finally, it also urged the addressee to return 'today' the document duly completed in order that it could be processed, and an envelope was attached for that purpose.

- 18 In those circumstances Ms Engler, as Janus Versand had requested, returned the 'payment notice' to it, as she believed that that was sufficient in order to obtain the promised prize of ATS 455 000.
- 19 At first Janus Versand did not react, it then refused to pay that sum to Ms Engler.
- 20 Ms Engler therefore brought an action against Janus Versand before the Austrian courts, based primarily on Paragraph 5j of the Konsumentenschutzgesetz, for an order that Janus Versand pay her the sum of ATS 455 000, plus costs and ancillary amounts. Ms Engler argues that that claim is a contractual claim since Janus Versand, by promising to award a prize, had encouraged her to conclude a contract with that company for sale of goods. However, such a claim is also founded on other grounds, in particular, the breach of pre-contractual obligations. In the alternative, Ms Engler takes the view that her claim is brought in tort, delict or quasi-delict.
- 21 Janus Versand contested the jurisdiction of the Austrian courts to hear the claim stating, first of all, that the letter on which that claim is founded did not come from it but from Handelskontor Janus GmbH, a company which is a separate legal entity; second, that it had not promised any prize to Ms Engler and, finally, that it did not have any contractual relationship with her.

- 22 On 2 October 2001 the Landesgericht Feldkirch (Austria) dismissed Ms Engler's action for lack of jurisdiction, since it held that she had not shown the connection between Janus Versand and the sender of the prize notification, namely 'Handelskontor Janus GmbH, Postfach 1670, Abt. 3 Z 4, D-88106 Lindau'.
- 23 Ms Engler appealed against that judgment to the Oberlandesgericht Innsbruck.
- 24 The Oberlandesgericht Innsbruck takes the view that in order to decide the question of jurisdiction regard must be had to the Brussels Convention. In that connection, it is necessary to establish whether the action brought by Ms Engler must be regarded as being founded on a contractual right for the purpose of Article 5(1) of the Brussels Convention, whether the action is in tort, delict or quasi-delict for the purpose of Article 5(3), or whether it is covered by Article 13, first paragraph, point 3, of that convention.
- 25 The national court points out that a similar question had already been referred to the Court by the Oberster Gerichtshof (Austria) in the case which gave rise to the judgment in Case C-96/00 *Gabriel* [2002] ECR I-6367, a judgment given after this reference for a preliminary ruling was made to the Court, but that the facts forming the basis of that case are different from those in the present case. In *Gabriel* the undertaking in question had made the participation in the lottery and, therefore, the payment of the prize allegedly won, dependent on an order which had to be placed

beforehand by the consumer, whereas in this case the award of the prize is not subject either to the placing of an order for goods by the consumer or their delivery by Janus Versand. Sending the 'payment notice' was sufficient for that purpose.

- 26 However, at the same time as the communication relating to the alleged prize, the consumer received a catalogue of goods sold by Janus Versand and a request for a 'trial without obligation', which was clearly to induce the addressee to conclude a contract for the purchase of goods offered by that company. The national court concludes that, whereas in *Gabriel* a contract for the sale of goods had been concluded, in this case, apart from the prize notification which could, if necessary, be assessed separately, only pre-contractual relations existed between the parties.
- 27 As it formed the view that, in those circumstances, the resolution of the dispute before it depended on the interpretation of the Brussels Convention, the Oberlandesgericht Innsbruck decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'For the purposes of the Brussels Convention ..., does the provision in Paragraph 5j of the Austrian Konsumentenschutzgesetz ..., in the version of Art I, para. 2, of the Austrian Fernabsatz-Gesetz ..., which entitles certain consumers to claim from undertakings in the courts prizes ostensibly won by them where the undertakings send (or have sent) them prize notifications or other similar communications worded so as to give the impression that they have won a particular prize, constitute:

(a) a contractual claim under Article 13(3); or

(b) a contractual claim under Article 5(1); or

(c) a claim in respect of a tort, delict or quasi-delict under Article 5(3)

where on the basis of the documents sent to him a sensible consumer could have thought that all he had to do to claim the amount held for him was to return an enclosed payment notice, so that the payment of the prize did not depend on an order for and delivery of goods from the undertaking promising the prize, but where a catalogue and a request for a trial offer without obligation are sent to the consumer with the prize notification?’

The question referred for a preliminary ruling

- 28 Taking account of the factual background of the case in the main proceedings, the question posed must be construed as asking, essentially, whether the rules of jurisdiction set out in the Brussels Convention are to be interpreted as meaning that

judicial proceedings by which a consumer seeks an order, in the Contracting State in which he is domiciled and pursuant to that State's legislation, requiring a mail-order company established in another Contracting State to award a prize ostensibly won by him is contractual in nature for the purposes of Article 5(1) or Article 13, first paragraph, point 3, or constitutes a claim in respect of a tort, delict or quasi-delict for the purposes of Article 5(3), where that company had addressed to the consumer personally a letter of such a kind as to give the impression that a prize would be given to him when he requested payment by returning the 'payment notice' attached to that letter and where a catalogue advertising products for that company and a request for a 'trial without obligation' were also contained, but the award of the prize was not dependent on an order for goods and even though the consumer did not actually make such an order.

- ²⁹ In order to answer the question thus reformulated, the Court observes at the outset that, according to settled case-law, the concept of matters relating to tort, delict or quasi-delict covered by Article 5(3) of the Brussels Convention includes all actions which seek to establish the liability of a defendant and which are not related to a contract within the meaning of Article 5(1) of that Convention (see, *inter alia*, Case 189/87 *Kalfelis* [1988] ECR 5565, paragraph 17; Case C-261/90 *Reichert and Kockler* [1992] ECR I-2149, paragraph 16; Case C-51/97 *Réunion européenne and Others* [1998] ECR I-6511, paragraph 22; *Gabriel*, paragraph 33; and Case C-167/00 *Henkel* [2002] ECR I-8111, paragraph 36).

- ³⁰ It follows that it is necessary first to examine whether an action such as that at issue in the main proceedings is contractual in nature.

- 31 In that connection, Article 5(1) of the Brussels Convention relates to contractual matters in general, whereas Article 13 thereof relates specifically to various types of contracts concluded by consumers.
- 32 As Article 13 of the Brussels Convention thus constitutes a *lex specialis* in relation to Article 5(1), it is first of all necessary to determine whether an action having the characteristics set out in the question referred for a preliminary ruling, as reformulated in paragraph 28 above, may fall within the scope of Article 13.
- 33 As the Court has repeatedly held, the concepts used in the Brussels Convention — and in particular those featured in Article 5(1) and (3) and Article 13 — must be interpreted independently, by reference principally to the system and objectives of the Convention, in order to ensure that it is uniformly applied in all the Contracting States (see, in particular, Case 150/77 *Bertrand* [1978] ECR 1431, paragraphs 14, 15 and 16; Case C-89/91 *Shearson Lehman Hutton* [1993] ECR I-139, paragraph 13; Case C-269/95 *Benincasa* [1997] ECR I-3767, paragraph 12; Case C-99/96 *Mietz* [1999] ECR I-2277, paragraph 26; and *Gabriel*, paragraph 37).
- 34 As regards, more specifically, Article 13, first paragraph, point 3, of the Brussels Convention, the Court has already held, on the basis of the criteria set out in the previous paragraph, that point 3 of that provision is applicable only in so far as, first, the claimant is a private final consumer not engaged in trade or professional activities, second, the legal proceedings relate to a contract between that consumer and the professional vendor for the sale of goods or services which has given rise to

reciprocal and interdependent obligations between the two parties and, third, that the two conditions specifically set out in Article 13, first paragraph, point 3(a) and (b) are fulfilled (see the judgment in *Gabriel*, paragraphs 38 to 40 and 47 to 51).

35 However, it must be concluded that those conditions are not all satisfied in a case such as that in the main proceedings.

36 Although it is indisputable that in a situation of that kind the claimant in the main proceedings is a consumer covered by the first paragraph of Article 13 of the Brussels Convention and that the vendor made contact with the consumer in the manner provided for in point 3(a) of that provision, by sending her a personalised letter containing a prize notification together with a catalogue and an order form for the sale of its goods in the Contracting State where she resides in order to induce her to take up the vendor's offer, the fact remains that in this case the vendor's initiative was not followed by the conclusion of a contract between the consumer and the vendor for one of the purposes referred to in that provision and in the course of which the parties assumed reciprocal obligations.

37 It is common ground that, in the case in the main proceedings, the award of the prize allegedly won by the consumer was not subject to the condition that she order goods from Janus Versand and no order was in fact placed by Ms Engler. Furthermore, it does not appear anywhere in the file that, by claiming the award of the promised 'prize', Ms Engler assumed any obligation towards that company, even by incurring an expense in order to obtain the award of the prize.

- 38 In those circumstances, an action such as that brought by Ms Engler in the case in the main proceedings cannot be regarded as being contractual in nature for the purposes of Article 13, first paragraph, point 3, of the Brussels Convention.
- 39 Contrary to the submissions of Ms Engler and the Austrian Government, that finding is not invalidated by the objective underlying that provision, namely to ensure adequate protection for the consumer as the party deemed to be economically weaker, or by the fact that, in this case, the letter was sent by Janus Versand to the consumer in person accompanied by a claim form entitled 'request for trial without obligation' and clearly intended to induce her to place an order for goods sold by that company.
- 40 As is apparent from its wording, Article 13 clearly covers a 'contract concluded' by a consumer 'for the supply of goods or a contract for the supply of services'.
- 41 The interpretation in paragraphs 36 to 38 of the present judgment is supported by the position of the rules on jurisdiction over consumer contracts, set out in Title II, Section 4, of the Brussels Convention, in the scheme of that convention.
- 42 Articles 13 to 15 of the Convention constitute a derogation from the basic rule, provided for in the first paragraph of Article 2 of that convention, which confers

jurisdiction on the courts of the Contracting State in which the defendant is domiciled.

- 43 It follows that, in accordance with settled case-law, the specific rules of jurisdiction provided for in Articles 13 to 15 of the Brussels Convention must give rise to a strict interpretation which cannot go beyond the cases envisaged by the Convention (see, in particular, the judgments in *Bertrand*, paragraph 17; *Shearson Lehman Hutton*, paragraphs 14 to 16; *Benincasa*, paragraph 13; and *Mietz*, paragraph 27).
- 44 Since Article 13, first paragraph, point 3, of the Brussels Convention is not applicable, therefore, in a case with the characteristics set out in the question as reformulated in paragraph 28 of the present judgment, it is therefore necessary to consider whether an action such as that at issue in the main proceedings may be regarded as being contractual in nature for the purposes of Article 5(1) of that convention.
- 45 In that connection it must be stated at the outset that, as it appears from its very wording, Article 5(1) of the Brussels Convention does not require the conclusion of a contract (see, to the same effect, the judgment in Case C-334/00 *Tacconi* [2002] ECR I-7357, paragraph 22).
- 46 It must also be recalled that the Court has already held that jurisdiction to hear disputes concerning the existence of a contractual obligation must be determined in accordance with Article 5(1) of the Brussels Convention and that that provision is therefore applicable even when the existence of the contract on which the claim is based is in dispute between the parties (see the judgment in Case 38/81 *Effer v Kanter* [1982] ECR 825, paragraphs 7 and 8).

- 47 Furthermore, it is clear from the case-law that the obligations which are based on the affiliation between an association and its members must be regarded as contractual for the purpose of Article 5(1) of the Brussels Convention, on the ground that the membership of a private law association creates between the members close links of the same kind as those which are created between the parties to a contract (see the judgment in Case 34/82 *Peters* [1983] ECR 987, paragraphs 13 and 15).
- 48 It follows from the foregoing that, as the Advocate General pointed out in point 38 of his Opinion, the concept of ‘matters relating to contract’ referred to in Article 5 (1) of the Brussels Convention is not interpreted narrowly by the Court.
- 49 It follows that the finding made in paragraphs 38 and 44 of the present judgment that the legal action brought in the main proceedings is not contractual in nature for the purposes of the first paragraph of Article 13 of the Brussels Convention does not in itself prevent that action from relating to a contract for the purposes of Article 5 (1).
- 50 In order to determine whether such is the case in the main proceedings, it must be observed that it is clear from the case-law, first, that although Article 5(1) of the Brussels Convention does not require the conclusion of a contract, the identification of an obligation is none the less essential for the application of that provision, since the jurisdiction of the national court is determined in matters relating to a contract by the place of performance of the obligation in question (see judgment in *Tacconi*, paragraph 22). Second, the Court has held on several occasions that the definition of matters relating to contract within the meaning of Article 5(1) of the Brussels Convention is not to be understood as covering a situation in which there is no obligation freely assumed by one party towards another (Case C-26/91 *Handte* [1992] ECR I-3967, paragraph 15; *Réunion européenne and Others*, paragraph 17; *Tacconi*, paragraph 23; and Case C-265/02 *Frahuil* [2004] ECR I-1543, paragraph 24).

- 51 Accordingly, the application of the rule of special jurisdiction provided for matters relating to a contract in Article 5(1) presupposes the establishment of a legal obligation freely consented to by one person towards another and on which the claimant's action is based.
- 52 In that regard, the national court held that in this case, first of all, a professional vendor sent on its own initiative to the consumer's domicile, without any request by her, a letter designating her by name as the winner of a prize.
- 53 Such a letter, sent to addressees and by the means chosen by the sender solely on its own initiative, may therefore constitute an obligation 'freely assumed' for the purpose of the case-law cited in paragraph 50 of the present judgment.
- 54 Furthermore, according to the national court, a prize notification made in such circumstances by a professional vendor who has not drawn attention to the existence of a loophole and has even used a formulation of such a kind as to mislead the consumer in order to induce him to enter a contract by acquiring the goods offered by that vendor, could reasonably lead the addressee of the letter to believe that a prize would be awarded to him if he returned the 'payment notice' attached.

55 Second, it is clear from the file submitted by the national court that the addressee of the letter at issue expressly accepted the prize notification made out in her favour by requesting payment of the prize she had ostensibly won.

56 From that moment at least, the intentional act of a professional vendor in circumstances such as those in the main proceedings must be regarded as an act capable of constituting an obligation which binds its author as in a matter relating to a contract. Therefore, and subject to the final classification of that obligation, which is a matter for the national court, the condition concerning the existence of a binding obligation by one party to the other, referred to in the case-law cited in paragraph 50 of the present judgment, may also be regarded as satisfied.

57 Legal proceedings such as those brought in the main proceedings by the consumer are intended to claim, as against a professional vendor, the award of a prize ostensibly won and whose payment has been refused by the latter. Therefore it is founded specifically on the prize notification, since the ostensible beneficiary invokes the failure to award the prize as the reason for bringing the proceedings.

58 It follows that all the conditions necessary for the application of Article 5(1) of the Brussels Convention are satisfied in a case such as that in the main proceedings.

59 For the reasons stated by the Advocate General in point 48 of his Opinion, the mere fact that the professional vendor did not genuinely intend to award the prize

announced to the addressee of his letter is irrelevant in that respect. Having regard to what was stated in paragraph 45 of the present judgment, the same is true for the fact that the award of the prize did not depend on an order for goods and that the consumer did not in fact make such an order.

60 In those circumstances an action such as that brought by Ms Engler before the national court falls within the scope of Article 5(1) of the Brussels Convention so that, as is clear from paragraph 29 of the present judgment, there is no longer any need to consider whether Article 5(3) is applicable.

61 In the light of all the foregoing considerations, the answer to the question submitted must be that the rules of jurisdiction set out in the Brussels Convention must be construed in the following way:

- legal proceedings by which a consumer seeks an order, under the law of the Contracting State in which he is domiciled, that a mail order company established in another Contracting State award a prize ostensibly won by him is contractual in nature for the purpose of Article 5(1) of that convention, provided that, first, that company, with the intention of inducing the consumer to enter a contract, addresses to him in person a letter of such a kind as to give the impression that a prize will be awarded to him if he returns the ‘payment notice’ attached to the letter and, second, he accepts the conditions laid down by the vendor and does in fact claim payment of the prize announced;

- on the other hand, even though the letter also contains a catalogue advertising goods for that company and a request for a ‘trial without obligation’, the fact

that the award of the prize does not depend on an order for goods and that the consumer has not, in fact, placed such an order has no bearing on that interpretation.

Costs

- 62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) rules as follows:

The rules of jurisdiction 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 interpreted in the following way:

- legal proceedings by which a consumer seeks an order, under the law of the Contracting State in which he is domiciled, that a mail order company established in another Contracting State award a prize ostensibly won by him is contractual in nature for the purpose of Article 5(1) of that convention, provided that, first, that company, with the intention of inducing the consumer to enter a contract, addresses to him in person a letter of such a kind as to give the impression that a prize will be awarded to him if he returns the ‘payment notice’ attached to the letter and, second, he accepts the conditions laid down by the vendor and does in fact claim payment of the prize announced;

- on the other hand, even though the letter also contains a catalogue advertising goods for that company and a request for a ‘trial without obligation’, the fact that the award of the prize does not depend on an order for goods and that the consumer has not, in fact, placed such an order has no bearing on that interpretation.

[Signatures]