



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

17 December 2020\*

(Reference for a preliminary ruling – Approximation of laws – Cosmetic products – Regulation (EC) No 1223/2009 – Article 19 – Consumer information – Labelling – Information that must appear on the product container and packaging – Labelling in a foreign language – ‘Function of the cosmetic product’ – Concept – Cosmetic product packaging which contains a reference to a detailed product catalogue drafted in the language of the consumer)

In Case C-667/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie XXIII Wydział Gospodarczy Odwoławczy (Regional Court, Warsaw, Poland, 23rd Commercial Appeals Division), by decision of 12 July 2019, received at the Court on 9 September 2019, in the proceedings

**A.M.**

v

**E.M.,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Third Chamber, N. Wahl (Rapporteur), F. Biltgen and L.S. Rossi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- A.M., by A. Chołub, adwokat,
- the Polish Government, by B. Majczyna, acting as Agent,
- the Belgian Government, by S. Baeyens and P. Cottin, acting as Agents,

\* Language of the case: Polish.

- the Danish Government, by J. Nymann-Lindegren, M.S. Wolff and P.Z.L. Ngo, acting as Agents,
- the Greek Government, by L. Kotroni, S. Charitaki and S. Papaioannou, acting as Agents,
- the Lithuanian Government, by K. Dieninis and K. Juodelytė, acting as Agents,
- the Netherlands Government, by M. Bulterman and M. Noort, acting as Agents,
- the European Commission, by M. Jáuregui Gómez and B. Sasinowska, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 July 2020,

gives the following

### **Judgment**

- 1 The present request for a preliminary ruling concerns the interpretation of Article 19(1)(f) and Article 19(2) of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ 2009 L 342, p. 59).
- 2 The request has been made in proceedings between A.M. and E.M. concerning the termination of a contract for the sale of cosmetic products concluded between those parties.

### **Legal context**

#### *EU law*

- 3 Recitals 3, 4, 6, 7, 9 and 46 of Regulation No 1223/2009 are worded as follows:
  - ‘(3) This Regulation aims at simplifying procedures and streamlining terminology, thereby reducing administrative burden and ambiguities. Moreover, it strengthens certain elements of the regulatory framework for cosmetics, such as in-market control, with a view to ensuring a high level of protection of human health.
  - (4) This Regulation comprehensively harmonises the rules in the Community in order to achieve an internal market for cosmetic products while ensuring a high level of protection of human health.
  - ...
  - (6) This Regulation relates only to cosmetic products and not to medicinal products, medical devices or biocidal products. The delimitation follows in particular from the detailed definition of cosmetic products, which refers both to their areas of application and to the purposes of their use.
  - (7) The assessment of whether a product is a cosmetic product has to be made on the basis of a case-by-case assessment, taking into account all characteristics of the product. ...

...

- (9) Cosmetic products should be safe under normal or reasonably foreseeable conditions of use. In particular, a risk-benefit reasoning should not justify a risk to human health.

...

- (46) Transparency is needed regarding the ingredients used in cosmetic products. Such transparency should be achieved by indication of the ingredients used in a cosmetic product on its packaging. Where for practical reasons it is impossible to indicate the ingredients on the packaging, such information should be enclosed so that the consumer has access to this information.'

- 4 According to Article 1, Regulation No 1223/2009 establishes rules to be complied with by any cosmetic product made available on the market, in order to ensure the functioning of the internal market and a high level of protection of human health.

- 5 Article 2(1)(a) of that regulation defines 'cosmetic product' as 'any substance or mixture intended to be placed in contact with the external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance, protecting them, keeping them in good condition or correcting body odours'.

- 6 Article 3 of Regulation No 1223/2009, entitled 'Safety', provides that:

'A cosmetic product made available on the market shall be safe for human health when used under normal or reasonably foreseeable conditions of use, taking account, in particular, of the following:

(a) presentation ...;

(b) labelling;

...'

- 7 Chapter VI of Regulation No 1223/2009, entitled 'Consumer information', contains Articles 19 to 21 thereof. Under the title 'Labelling', Article 19 of the regulation provides that:

'1. Without prejudice to other provisions in this Article, cosmetic products shall be made available on the market only where the container and packaging of cosmetic products bear the following information in indelible, easily legible and visible lettering:

...

- (d) particular precautions to be observed in use, and at least those listed in Annexes III to VI and any special precautionary information on cosmetic products for professional use;

...

- (f) the function of the cosmetic product, unless it is clear from its presentation;

(g) a list of ingredients. This information may be indicated on the packaging alone. The list shall be preceded by the term “ingredients”.

...

2. Where it is impossible for practical reasons to label the information mentioned in points (d) and (g) of paragraph 1 as provided, the following applies:

- the information shall be mentioned on an enclosed or attached leaflet, label, tape, tag or card;
- unless impracticable, this information shall be referred to by abbreviated information or the symbol given in point 1 of Annex VII, which must appear on the container or packaging for the information referred in point (d) of paragraph 1 and on packaging for the information referred in point (g) of paragraph 1.

3. In the case of soap, bath balls and other small products where it is impossible for practical reasons for the information referred to in point (g) of paragraph 1 to appear on a label, tag, tape or card or in an enclosed leaflet, this information shall appear on a notice in immediate proximity to the container in which the cosmetic product is exposed for sale.

4. For cosmetic products that are not pre-packaged, are packaged at the point of sale at the purchaser’s request, or are pre-packaged for immediate sale, Member States shall adopt detailed rules for indication of the information referred to in paragraph 1.

5. The language of the information mentioned in points (b), (c), (d) and (f) of paragraph 1 and in paragraphs (2), (3) and (4) shall be determined by the law of the Member States in which the product is made available to the end user.

...’

8 Article 20 of Regulation No 1223/2009, entitled ‘Product claims’, provides, in its paragraphs (1) and (2):

‘1. In the labelling, making available on the market and advertising of cosmetic products, text, names, trade marks, pictures and figurative or other signs shall not be used to imply that these products have characteristics or functions which they do not have.

2. The Commission shall, in cooperation with Member States, establish an action plan regarding claims used and fix priorities for determining common criteria justifying the use of a claim.

...’

9 Annex VII to Regulation No 1223/2009, entitled ‘Symbols used on packaging/container’, states:

‘1. Reference to enclosed or attached information



...'

***Polish law***

- 10 Article 2 of the ustawa o kosmetykach (Law on cosmetic products) of 30 March 2001 (Dz. U. No 42, position 473), in the version in force on the date on which the contract of sale at issue in the main proceedings was concluded (Dz. U. of 2013, position 475), provides as follows:

'1. For the purposes of this Law, "cosmetic product" shall mean any chemical substance or mixture intended for placing in contact with the surface of the human body (skin, scalp hair and body hair, lips, nails, external genital organs, teeth and the mucous membranes of the oral cavity) with a view exclusively or principally to cleaning them, nurturing them, protecting them or perfuming them or changing the appearance of the body or correcting body odours.

2. The Minister for Health shall, by decree, define the most widely used categories of cosmetic products, having regard for the criteria defined in paragraph 1.'

- 11 Article 6 of that Law is worded as follows:

'1. The packaging of a cosmetic product must be visibly and legibly labelled by a method which ensures that the labelling cannot be easily removed.

2. Subject to paragraph 3, the labelling of the packaging of a cosmetic product, as it appears on the container and on the packaging, must include the following information:

...

(5) The particular precautions for use of the cosmetic product, where it is intended to be used in a professional context in accordance with its intended purpose, as well as other necessary precautions;

...

(7) The function of the cosmetic product, where this is not clear from its presentation;

(8) A list of ingredients defined in accordance with the descriptions in the International Nomenclature of Cosmetic Ingredients (INCI), preceded by the term "ingredients"...

...

4. The indications referred to in point (8) of paragraph 2 may appear only on the packaging of the cosmetic product.

...

6. Where, owing to the size or shape of the packaging, the warnings or indications referred to in paragraph 2, points (5) and (8), cannot be included on the packaging, these may be mentioned on a leaflet, label, tape or card enclosed with the product. In such cases, the container or packaging

must bear an abbreviated formulation or graphic symbol indicating that the information in question is enclosed with the product.

7. Where, owing to the size or shape of the packaging, the indications referred to in point (8) of paragraph 2 cannot be included on a leaflet, label, tape or card enclosed with the product, these shall appear directly on the container or in a place where the cosmetic product offered for sale is accessible to purchasers.

8. Where the cosmetic product is not pre-packaged as a number of items but is packaged at the point of sale at the purchaser's request, or where the product is pre-packaged as a number of items for immediate sale, the information referred to in paragraph 2, points (1), (2) and (4) to (8), shall appear on the recipient or the package in which the cosmetic product is offered for sale.

...'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 12 A.M., who, among other activities, is the owner of a beauty salon, purchased cosmetic products manufactured by a company based in the United States from E.M., which distributes those products.
- 13 Specifically, it is apparent from the case file before the Court that A.M. received training in the products marketed by E.M., provided by E.M.'s sales representative. During that training, the labelling of those products was presented to her and the properties of each product were explained to her. The sales representative provided her with documentation in Polish for that purpose, and also with retail sales leaflets and the training scripts. A.M. had also been informed that these were cosmetic products from the United States, and that their packaging contained no information in Polish about their action but did bear a symbol representing a hand with an open book, referring to a catalogue containing full information, in Polish, about the products.
- 14 Further to that training, on 28 and 29 January 2016, A.M. purchased from E.M. 40 retail sales leaflets for PLN 0.01 (approximately EUR 0.002) per unit, 10 company catalogues for PLN 0.01 per unit and various cosmetic products, that is to say, creams, facial masks and powders, for a gross sum of PLN 3 184.25 (EUR 711.61). The product packaging bore the name of the responsible entity, the original name of the cosmetic product, its composition, expiry date and serial number, and a symbol representing a hand with an open book, referring to the catalogue in Polish.
- 15 A.M. terminated the contract of sale for those products on the ground that the items sold were defective, claiming that the packaging did not feature information in Polish on the function of each product, and that it was therefore impossible to identify what the product was and what its effects were since those characteristics were not evident from the presentation. A.M. stated that the retail cosmetic products which she had received in the most recent delivery did not include on their packaging the information, in Polish, required under the law applicable in Poland to the trade in cosmetics, that is to say, that resulting from Article 19(1)(f) and Article 19(5) of Regulation No 1223/2009. She also argued that the information required by the legislation, in Polish, had been included only in the catalogue, which was not fixed to the product.

- 16 E.M., for its part, gave an assurance that the products had been labelled in accordance with the national provisions in force and with Article 19 of Regulation No 1223/2009. It thus stated that the symbol representing a hand with an open book appeared on the products and referred the end user to a leaflet, in this instance a catalogue provided in Polish with each product. E.M. specified that this catalogue contained a full presentation in Polish of the products and their functions, including their contraindications, explained how to use them and listed their ingredients.
- 17 A.M. brought proceedings before the Sąd Rejonowy dla m. st. Warszawy w Warszawie (District Court for the Capital City of Warsaw in Warsaw, Poland) seeking reimbursement of the costs of purchasing the products concerned. That court dismissed the action on the ground that A.M. had failed to prove that she was unaware that the products were not provided with any information in Polish. That court took particular account of the earlier cooperation between the parties, the fact that A.M. had not previously drawn attention to defects in the goods, and the circumstance that, in this case, the individual external packaging of the products did in fact display a symbol referring to attached information and that the symbol in question served to improve legibility and enhance communication with consumers.
- 18 A.M. appealed against that judgment to the Sąd Okręgowy w Warszawie XXIII Wydział Gospodarczy Odwoławczy (Regional Court, Warsaw, Poland, 23rd Commercial Appeals Division). She challenged, in particular, the finding by the first-instance court that the catalogue to which consumers were referred amounted to correct labelling of the cosmetic products sold to her, arguing that it was not evident from the evidence adduced that it was impossible for the required information to be displayed on the products concerned.
- 19 In those circumstances, the Sąd Okręgowy w Warszawie XXIII Wydział Gospodarczy Odwoławczy (Regional Court, Warsaw, 23rd Commercial Appeals Division) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) In so far as it provides that the container and packaging of cosmetic products should bear in indelible, easily legible and visible lettering information as to the function of the cosmetic product, unless it is clear from its presentation, should Article 19(1)(f) of Regulation No 1223/2009 be interpreted as referring to the essential functions of cosmetic products within the meaning of Article 2(1)(a) of the Regulation, that is, cleaning (keeping clean), nurturing and protecting (keeping in good condition), perfuming and beautifying (changing appearance), or should more detailed functions be stated, enabling the properties of the cosmetic product in question to be determined?
- (2) Should Article 19(2) and recital 46 of Regulation No 1223/2009 be interpreted as meaning that the information referred to in Article 19(1)(d), (g) and (f), namely, precautions, ingredients and functions, may be stated in a company’s catalogue which also includes other products, by placing the symbol set out in point 1 of Annex VII on the packaging?’

## The questions referred

### *The first question*

- 20 By its first question, the referring court enquires, in essence, whether Article 19(1)(f) of Regulation No 1223/2009 must be interpreted as meaning that the indication of the ‘function of the cosmetic product’ which, by virtue of that provision, must feature on the container and packaging of a cosmetic product, must be such as to inform consumers only of the purposes of using the product, as referred to in Article 2(1)(a) of that regulation – namely, cleaning, perfuming, changing appearance, protecting and keeping in good condition and correcting body odours – or also of all the functions which enable consumers to identify the properties specific to the product concerned.
- 21 According to Article 19(1)(f) of Regulation No 1223/2009, cosmetic products are to be made available on the market only where the container and packaging of cosmetic products display, in indelible, easily legible and visible lettering, ‘the function of the cosmetic product, unless it is clear from its presentation’.
- 22 According to settled case-law, in order to interpret the expression ‘function of the cosmetic product’ within the meaning of that provision, it is necessary to consider not only the wording of that provision but also its context and the objectives pursued by the rules of which it is part (judgment of 2 April 2020, *kunsthaus muerz*, C-20/19, EU:C:2020:273, paragraph 28 and the case-law cited).
- 23 First, the wording of that provision does not define ‘function of the cosmetic product’. That expression, moreover, is not used in other provisions of Regulation No 1223/2009.
- 24 Article 2(1)(a) of that regulation defines a cosmetic product by setting out three criteria. That article establishes, first, a criterion relating to the nature of the product in question, that is to say, it must be a substance or mixture of substances, thereafter, a criterion relating to the part of the human body with which the product is intended to be placed in contact, and, lastly, a criterion concerning the purpose of using that product (see, to that effect, judgment of 3 September 2015, *Colena*, C-321/14, EU:C:2015:540, paragraph 19).
- 25 Article 2(1)(a) provides, in relation to that last criterion, that, in order to be defined as a cosmetic product, a product must be intended exclusively or mainly to clean, perfume, change the appearance of, protect or keep in good condition one of the parts of the body listed in that provision or to correct body odours.
- 26 Secondly, in respect of both the context of Article 19(1) of Regulation No 1223/2009 and the objectives of the legislation of which it forms part, it should be noted that this article, which is the first article in Chapter VI of the regulation, entitled ‘Consumer information’, sets out the labelling rules to be complied with for all cosmetic products made available on the EU market.
- 27 It follows from a reading of the provisions of Regulation No 1223/2009 as a whole, in particular its Article 1, read in the light of recitals 3 and 4 thereof, that that regulation has as its objective an exhaustive harmonisation of the rules in force in the European Union which is aimed at establishing an internal market for cosmetic products while, at the same time, ensuring a high level of protection for human health (see, to that effect, judgment of 12 April 2018, *Fédération des entreprises de la beauté*, C-13/17, EU:C:2018:246, paragraphs 23 to 25 and the case-law cited).



- 28 In that regard, it is important, as recital 9 of Regulation No 1223/2009 states, that cosmetic products should be safe under normal or reasonably foreseeable conditions of use. As emerges from points (a) and (b) of the first paragraph of Article 3 of that regulation, a cosmetic product made available on the market must be safe for human health when used ‘under normal or reasonably foreseeable conditions of use’, account being taken, in particular, of factors relating to its presentation and labelling. There is thus a close link between the safety of cosmetic products made available on the market, on the one hand, and the requirements relating to their presentation and labelling, on the other.
- 29 Article 19 of Regulation No 1223/2009 accordingly aims at an exhaustive harmonisation of the rules on the packaging and labelling of cosmetic products since, besides the fact that such harmonisation facilitates achievement of the objective of cosmetic products being marketed and sold within the European Union, it also seeks to protect human health in the sense that information that could mislead consumers about the characteristics of a cosmetic product could also affect human health.
- 30 It follows from all of the foregoing that the requirement, under Article 19(1)(f) of Regulation No 1223/2009, to provide information on the function of cosmetic products in indelible, easily legible and visible lettering on the container and packaging of cosmetic products cannot be limited merely to indicating the purposes of use of the product, referred to in Article 2(1)(a) of that regulation, namely, cleaning, perfuming, changing the appearance of, protecting or keeping in good condition any of the parts of the body listed in that article or correcting body odours.
- 31 A further corollary is that, whilst those purposes make it possible to determine whether a particular product can be classified as a cosmetic product, on the basis of its use and purpose (see, to that effect, judgment of 3 September 2015, *Colena*, C-321/14, EU:C:2015:540, paragraphs 19 and 22), and, therefore, as can be seen from recital 6 of that regulation, to distinguish that product from other products which do not come within the scope of Regulation No 1223/2009, the ‘function of the cosmetic product’, within the meaning of Article 19(1)(f) of that regulation, concerns the indication of more specific characteristics of that product.
- 32 Indications of those characteristics must give consumers access to fuller information on the product container and packaging about the product’s use and how it is to be used, unless these are clear from the presentation of the product. Those indications, therefore, enable consumers to be fully informed when choosing the product, and therefore not to be misled, and to use it appropriately in order to safeguard the objective of ensuring a high level of protection of human health.
- 33 Nor can the concept of ‘function of the cosmetic product’, within the meaning of Article 19(1)(f) of Regulation No 1223/2009, be confused with the ‘product claims’ referred to in Article 20 of that regulation, which are governed by specific rules laid down in Commission Regulation (EU) No 655/2013 of 10 July 2013 laying down common criteria for the justification of claims used in relation to cosmetic products (OJ 2013 L 190, p. 31), those ‘claims’ being intended to provide a larger amount of information about the characteristics and qualities of those products.
- 34 Accordingly, in reply to the specific doubts expressed by the referring court, it should be stated that the indications which must be mentioned by way of the ‘function of the cosmetic product’, under Article 19(1)(f) of Regulation No 1223/2009, do not include detailed information about the properties of the cosmetic product, in particular on the desired effect and the target group of users of the product.

- 35 The nature and extent of the information about the function of the cosmetic product that must appear on the container and packaging of that product under that provision must be assessed, in each case, in the light of the characteristics and properties of each product in question, taking into account the presumed expectations of an average consumer who is reasonably well informed and reasonably observant and circumspect (see, to that effect, judgments of 13 January 2000, *Estée Lauder*, C-220/98, EU:C:2000:8, paragraphs 27 and 28 and the case-law cited, and of 24 October 2002, *Linhart and Biffl*, C-99/01, EU:C:2002:618, paragraph 31).
- 36 That provision requires that the information displayed on the container and packaging of the cosmetic product, reduced where applicable to merely the generic name of the product in question or its common name, be capable of clearly informing an average consumer who is reasonably well informed and reasonably observant and circumspect of the function of the product concerned, so that that consumer will not be misled as regards its use and how it is to be used, and will use the product in a way that is not harmful to his or her health.
- 37 In the light of the foregoing, the reply to the first question is that Article 19(1)(f) of Regulation No 1223/2009 must be interpreted as meaning that the indication of the ‘function of the cosmetic product’ which, by virtue of that provision, is required to appear on the container and packaging of a cosmetic product must be capable of clearly informing consumers of the use of the product and how it is to be used in order to ensure that the product can be used safely by consumers without harming their health, and therefore cannot be limited merely to an indication of the purposes of the use of the product, as referred to in Article 2(1)(a) of that regulation. It is for the referring court to verify, in view of the characteristics and properties of the product in question and of the expectations of an average consumer who is reasonably well informed and reasonably observant and circumspect, the nature and extent of the information which must appear in that respect on the container and packaging of the product in order to ensure that it can be used without endangering human health.

### ***The second question***

- 38 By its second question, the referring court enquires, in essence, whether Article 19(2) of Regulation No 1223/2009 must be interpreted as meaning that the information referred to in Article 19(1)(d), (f) and (g) of that regulation, namely, information about particular precautions to be observed when using the cosmetic product, the function of the product and its ingredients respectively, may appear in a company catalogue which also includes other products, where the packaging or container of the cosmetic product bears the symbol set out in point 1 of Annex VII to that regulation.
- 39 Article 19(2) of Regulation No 1223/2009 provides that, where it is impossible for practical reasons to label that information, indications relating to the information about the particular precautions to be observed in use and the ingredients, which is required under points (d) and (g) respectively of Article 19(1) of that regulation, are to be mentioned ‘on an enclosed or attached leaflet, label, tape, tag or card’. In such a case, according to Article 19(2), unless impracticable, that information must be referred to either by abbreviated information or by the symbol reproduced in point 1 of Annex VII to the regulation, which must appear on the container or packaging for the information referred to in point (d) and on the packaging alone for the information referred to in point (g).

- 40 Accordingly, first, it is necessary to distinguish between, on the one hand, information about the function of the product, as required under Article 19(1)(f) of Regulation No 1223/2009, and, on the other, information on the precautions to be observed in use and on the ingredients, referred to in Article 19(1) (d) and (g) of that regulation, since the latter information alone may appear on a medium other than the product labelling, in the circumstances referred to in Article 19(2).
- 41 Secondly, the derogation, established in Article 19(2) of Regulation No 1223/2009, from the labelling obligations laid down in Article 19(1) must be interpreted in the light of recital 46 of the regulation, which states that, ‘where for practical reasons it is impossible to indicate the ingredients on the packaging, such information should be enclosed so that the consumer has access to this information.’
- 42 Article 19(2) of Regulation No 1223/2009 thus establishes a derogation from the general labelling provisions and must, therefore, be construed strictly (see, by analogy, judgment of 13 September 2001, *Schwarzkopf*, C-169/99, EU:C:2001:439, paragraph 31).
- 43 With regard to the case in the main proceedings, it is for the referring court alone to determine, on a case-by-case basis, according to the facts of the case pending before it, whether the circumstances obtain in which that provision can apply. However, it can be said that the reference to ‘a separate company catalogue which includes several products’, such as the catalogue provided on the sale of the products in question, does not appear to be compliant with the provisions of Regulation No 1223/2009.
- 44 First, when there is a reference of that kind, the only medium external to the cosmetic product that may be used, under Article 19(2) of that regulation, is ‘an enclosed or attached leaflet, label, tape, tag or card’. Annex VII to that regulation, which features the three symbols which may appear on the packaging or container of the cosmetic product, expressly envisages, as can be seen from the wording of point 1 thereof, a ‘reference to enclosed or attached information’, for which the corresponding symbol represents a hand with an open book. A separately provided company catalogue, which contains descriptions not only of the cosmetic product or products in question but also of other products in the range offered by the manufacturer, is not enclosed with or attached to a specific product.
- 45 Secondly, it is apparent from Article 19(2) of Regulation No 1223/2009 that the information referred to in Article 19(1) may be displayed on a medium external to the cosmetic product only where it is impossible ‘for practical reasons’ to label that information. That impossibility relates to situations in which it is physically impossible to display certain information by reason of the nature and presentation of the product themselves.
- 46 In that context, the fact, mentioned by the referring court, that the cosmetic products at issue are imported, which inherently gives rise to organisational and financial difficulties associated with the need to translate certain information and carry out relabelling or even repackaging operations, given the requirement to display the required information in the language determined in accordance with Article 19(5) of Regulation No 1223/2009, does not in itself make it practically impossible to display that information on the labelling. The costs occasioned by the relabelling of those products in a different language, in order to market them in other Member States, cannot under any circumstances be regarded as constituting a sufficient reason for failing to label the product fully on the container and packaging.

- 47 The requirement set out in Article 19(5), namely that the information referred to in Article 19(1)(b) to (d) and (f) and in Article 19(2) to (4) be provided in the language laid down by the law of the Member State in which the product is made available to the end user, ensures a high level of consumer protection. The protection of human health cannot be comprehensively ensured unless consumers are fully informed about and understand, inter alia, the information about the function of the cosmetic product concerned and the particular precautions to be observed in use. The information which producers or distributors of the cosmetic products covered by Regulation No 1223/2009 are obliged to put on the product's container and packaging, save where it can be effectively conveyed by the use of pictogrammes or signs other than words, will be of no practical use unless it is provided in a language which can be understood by the persons for whom it is intended (see, by analogy, judgment of 13 September 2001, *Schwarzkopf*, C-169/99, EU:C:2001:439, paragraph 40 and the case-law cited).
- 48 Similarly, the fact that labelling the cosmetic products is the responsibility of a third person who is not a party to the contract for sale at issue in the main proceedings, that is to say, the manufacturer of those products, rather than their distributor, likewise does not mean that it is practically impossible to display the required information on the labels of those products. As the Court has stated in this regard, the wish of the manufacturer or distributor of cosmetic products to facilitate their movement within the European Union is not sufficient in itself to justify omitting the full obligatory information. Since the concept of being 'impossible' refers generally to a factual circumstance over which the person invoking it has no control, it cannot be understood as entitling the producer or distributor of cosmetic products, because of the number of EU or other languages which it decides to use, to claim, for its own convenience, that full compliance is 'impossible for practical reasons' within the meaning of Article 19(2) of Regulation No 1223/2009 (see, by analogy, judgment of 13 September 2001, *Schwarzkopf*, C-169/99, EU:C:2001:439, paragraph 35).
- 49 The answer to the second question is therefore that Article 19(2) of Regulation No 1223/2009 must be interpreted as meaning that the information referred to in Article 19(1)(d), (f) and (g) of that regulation, namely, information about particular precautions to be observed when using the cosmetic product, the function of the product and its ingredients respectively, may not appear in a company catalogue to which reference is made by means of the symbol set out in point 1 of Annex VII to that regulation displayed on the packaging or container of that product.

### **Costs**

- 50 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 (Third Chamber) hereby rules:

- 1. Article 19(1)(f) of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products must be interpreted as meaning that the indication of the ‘function of the cosmetic product’ which, by virtue of that provision, is required to appear on the container and packaging of a cosmetic product, must be capable of clearly informing consumers of the use of the product and how it is to be used in order to ensure that the product can be used safely by consumers without harming their health, and therefore cannot be limited merely to an indication of the purposes of the use of the product, as referred to in Article 2(1)(a) of that regulation. It is for the referring court to verify, in view of the characteristics and properties of the product in question and of the expectations of an average consumer who is reasonably well informed and reasonably observant and circumspect, the nature and extent of the information which must appear in that respect on the container and packaging of the product in order to ensure that it can be used without endangering human health.**
- 2. Article 19(2) of Regulation No 1223/2009 must be interpreted as meaning that the information referred to in Article 19(1)(d), (f) and (g) of that regulation, namely, information about particular precautions to be observed when using the cosmetic product, the function of the product and its ingredients respectively, may not appear in a company catalogue to which reference is made by means of the symbol set out in point 1 of Annex VII to that regulation displayed on the packaging or container of that product.**

[Signatures]