

Judgment of the Court (First Chamber) of 7 September 2006 (reference for a preliminary ruling from the Gerechtshof te 's Gravenhage, Netherlands) — Bovemij Verzekeringen NV v Benelux-Merkenbureau

(Case C-108/05) ⁽¹⁾

(Trade Marks — Directive 89/104/EEC — Article 3(3) — Distinctive character — Acquisition through use — Taking into account all or a substantial part of the Benelux territory — Taking into account the linguistic regions of Benelux — Word mark EUROPOLIS)

(2006/C 294/19)

Language of the case: Dutch

Referring court

Gerechtshof te 's Gravenhage, Netherlands

Parties to the main proceedings

Applicant: Bovemij Verzekeringen NV

Defendant: Benelux-Merkenbureau

Re:

Reference for a preliminary ruling — Gerechtshof te 's-Gravenhage — Interpretation of Article 3(3) of Council Directive 89/104/EEC, of 21 December 1988, approximating the laws of the Member States relating to trade marks (OJ 1988 L 40, p. 1) — Assessment of the distinctive character of a mark — Use of the mark — Reputation of the mark throughout the Benelux territory or in a considerable part of it (e.g. the Netherlands) — Linguistic regions taken into account

Operative part of the judgment

- Article 3(3) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the registration of a trade mark can be allowed on the basis of that provision only if it is proven that that trade mark has acquired distinctive character through use throughout the territory of the Member State or, in the case of Benelux, throughout the part of the territory of Benelux in which there exists a ground for refusal.
- As regards a mark consisting of one or more words of an official language of a Member State or of Benelux, if the ground for refusal exists only in one of the linguistic areas of the Member State or, in the case of Benelux, in one of its linguistic areas, it must be established that the mark has acquired distinctive character through use throughout that linguistic area. In the linguistic area thus defined, it must be assessed whether the relevant class of persons, or at least a significant proportion thereof, identifies the

product or service in question as originating from a particular undertaking because of the trade mark.

⁽¹⁾ OJ C 115, 14.5.2005.

Judgment of the Court (Third Chamber) of 28 September 2006 — Commission of the European Communities v Republic of Austria

(Case C-128/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Sixth VAT Directive — International transport undertakings established in another Member State — Annual turnover in Austria of EUR 22000 or less — Simplified procedures for charging and collecting the VAT)

(2006/C 294/20)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou, Agent)

Defendant: Republic of Austria (represented by: H. Dossi and M. Fruhmann, Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2, 6, 9(2)(b), 17, 18 and 22(3) to (5) of Council Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Specific rules for companies involved in international passenger transport established in another State and whose annual turnover in Austria does not exceed EUR 22 000 — No duty to submit periodic declarations and to pay the net amount of VAT

Operative part of the judgment

The Court:

- Declares that by allowing taxable persons not established in Austria who transport passengers there not to submit tax return forms and not to pay the net amount of VAT when their annual turnover in Austria is below EUR 22 000, in that case deeming the amount of VAT due to be equal to the amount of deductible VAT and making application of the simplified rules contingent on