V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 23 March 2010 (reference for a preliminary ruling from the Cour de cassation — France) — Google France, Google, Inc. v Louis Vuitton Malletier (C-236/08), Viaticum SA, Luteciel SARL (C-237/08), Centre national de recherche en relations humaines (CNRRH) SARL, Pierre-Alexis Thonet, Bruno Raboin, Tiger SARL (C-238/08)

(Joined Cases C-236/08 to C-238/08) [1]

(Trade marks — Internet — Search engine — Keyword advertising — Display, on the basis of keywords corresponding to trade marks, of links to sites of competitors of the proprietors of those marks or to sites offering imitation goods — Directive 89/104/EEC — Article 5 — Regulation (EC) No 40/94 — Article 9 — Liability of the search engine operator — Directive 2000/31/EC ('Directive on electronic commerce'))

(2010/C 134/02)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Google France, Google, Inc.

Defendants: Louis Vuitton Malletier (C-236/08), Viaticum SA, Luteciel SARL (C-237/08), Centre national de recherche en relations humaines (CNRRH) SARL, Pierre-Alexis Thonet, Bruno Raboin, Tiger SARL (C-238/08)

Re:

Reference for a preliminary ruling — Cour de Cassation — Interpretation of Articles 5(1)(a) and (b) and (2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), Article 9(1)(a) to (c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and Article 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1) — Concept of 'use' of the mark and rights of the proprietor thereof — Provider of paid Internet referencing services who does not advertise his own goods or services but makes available to advertisers keywords reproducing or imitating registered trade marks and arranges, by the referencing agreement, to create and favourably display, on the basis of those keywords, advertising links to sites offering infringing goods — Conditions under which the service provider storing information provided by the recipients of those services does not incur liability

Operative part of the judgment

1. *Article 5(1)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks and Article 9(1)(a) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that the proprietor of a trade mark is entitled to prohibit an advertiser from advertising, on the basis of a keyword identical with that trade mark which that advertiser has, without the consent of the proprietor, selected in connection with an internet referencing service, goods or services identical with those for which that mark is registered, in the case where that advertisement does not enable an average internet user, or enables that user only with difficulty to ascertain whether the goods or services referred to therein originate from the proprietor of the trade mark or an undertaking economically connected to it or, on the contrary, originate from a third party.*

2. *An internet referencing service provider which stores, as a keyword, a sign identical with a trade mark and organises the display of advertisements on the basis of that keyword does not use that sign within the meaning of Article 5(1) and (2) of Directive 89/104 or of Article 9(1) of Regulation No 40/94.*

3. *Article 14 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') must be interpreted as meaning that the rule laid down therein applies to an internet referencing service provider in the case where that service provider has not played an active role of such a kind as to give it knowledge of, or control over, the data stored. If it has not played such a role, that service provider cannot be held liable for the data which it has stored at the request of an advertiser, unless, having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it failed to act expeditiously to remove or to disable access to the data concerned.*

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (First Chamber) of 25 March 2010 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH v Günter Guni, trekking.at Reisen GmbH

(Case C-278/08) ([1])

(Trade marks — Internet — Keyword advertising — Display, on the basis of keywords which are identical with or similar to trade marks, of links to sites of competitors of the proprietors of those trade marks — Directive 89/104/EEC — Article 5(1))

(2010/C 134/03)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH

Defendants: Günter Guni, trekking.at Reisen GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(1) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Reservation of a sign similar or identical to a trade mark with an internet search engine operator in order that, once that sign has been entered as a search term, advertising for products or services identical or similar to those for which the trade mark in question was registered appears automatically on the screen ('keyword advertising') — Classification of that utilisation of the trade mark as a use which its proprietor is entitled to prevent

Operative part of the judgment

Article 5(1) 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 proprietor of a trade mark is entitled to prohibit an advertiser from advertising, on the basis of a keyword identical with or similar to that trade mark which that advertiser has, without the consent of that proprietor, selected in connection with an internet referencing service, goods or services identical with those for which that mark is registered, in the case where that advertising does not enable an average internet user, or enables that user only with difficulty, to ascertain whether the goods or services referred to therein originate from the proprietor of the trade mark or by an undertaking which is economically connected to it or, on the contrary, originate from a third party.

([1]) OJ C 223, 30.08.2008

Judgment of the Court (Fourth Chamber) of 18 March 2010 (references for a preliminary ruling from the Giudice di Pace di Ischia — Italy) — Rosalba Alassini (C-317/08) and Filomena Califano v Wind SpA (C-318/08) and Lucia Anna Giorgia Iacono v Telecom Italia SpA (C-319/08) and Multiservice Srl v Telecom Italia SpA (C-320/08)

(Joined Cases C-317/08 to C-320/08) ([1])

(Reference for a preliminary ruling — Principle of effective judicial protection — Electronic communications networks and services — Directive 2002/22/EC — Universal Service — Disputes between end users and providers — Mandatory to attempt an out-of-court settlement)

(2010/C 134/04)

Language of the case: Italian

Referring court

Giudice di Pace di Ischia