

JUDGMENT OF THE COURT (Fifth Chamber)
16 January 1992*

In Case C-373/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Juge d'Instruction attached to the Tribunal de Grande Instance of Bergerac (France) for a preliminary ruling in the complaint against

X

on the interpretation of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (Official Journal L 250, p. 17),

THE COURT (Fifth Chamber),

composed of: Sir Gordon Slynn (President of Chamber, acting as President), F. Grévisse, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Zuleeg, Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of the Commission of the European Communities by Xavier Lewis and Maria Condou-Durande, members of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

* Language of the case: French.

after hearing the oral observations of Jean-Pierre Richard, the civil party in the main proceedings, represented by J. M. Reynaud, Avocat, of the Versailles Bar, and of the Commission at the hearing on 25 September 1991,

after hearing the Opinion of the Advocate General at the sitting on 24 October 1991,

gives the following

Judgment

- 1 By a letter of 12 December 1990, which was received at the Court on 17 December 1990, the Juge d'Instruction (Examining Magistrate) at the Tribunal de Grande Instance (Regional Court), Bergerac, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (Official Journal L 250, p. 17).
- 2 The question arose in the context of a complaint lodged against X, together with a claim for civil indemnity, by Jean-Pierre Richard, the Chairman of the Board of Directors of the Société Richard-Nissan, which enjoys an exclusive importation contract for Nissan vehicles on French territory. The complaint, brought under Article 44 of French Law No 73-1193 of 27 December 1973 on the Orientation of Business and Crafts, known as the 'Loi Royer', alleges untruthful and unlawful advertising.
- 3 The French legal provision in question was communicated by the French Government to the Commission as the legislative measure implementing the directive.

- 4 The complaint concerned a garage in Bergerac which placed display advertisements in the press with the words 'buy your new vehicle cheaper', followed by the words 'one year manufacturer's guarantee'. It transpires from the letter containing the reference that the advertising refers to vehicles imported from Belgium, registered for import purposes but never having been driven, being sold in France below local dealers' prices because Belgian basic models have fewer accessories than the basic models sold in France.

- 5 On those facts, the Examining Magistrate dealing with the dispute at the Tribunal de Grande Instance of Bergerac decided to stay the proceedings pending a preliminary ruling from the Court of Justice on the question 'whether such a marketing practice is in compliance with the European rules currently in force'.

- 6 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 7 It should be recalled at the outset that, by a line of authority now well-established by the Court, the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts, and that, in applying national law, the national court is therefore required to interpret it in the light of the wording and purpose of the directive in order to achieve the result pursued by the latter and thereby comply with the third paragraph of Article 189 of the Treaty (see Case 14/83 *Von Colson and Kamann* [1984] ECR 1891, paragraph 26, and Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8).

- 8 The national court's question must therefore be understood as asking whether or not Council Directive 84/450, referred to above, precludes advertising of the type at issue in the main proceedings.
- 9 As is clear from the preamble, this directive, adopted under Article 100 of the Treaty, aims to improve consumer protection and to put an end to distortions of competition and hindrances to the free movement of goods and services arising from disparities between the Member States' laws against misleading advertising. With those objectives in mind, it seeks to establish minimum and objective criteria as a basis for determining whether advertising is misleading.
- 10 Article 2(2) of the directive defines 'misleading advertising' as:
- 'any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor'.
- 11 In interpreting this provision in relation to the features of advertising such as that at issue in the main proceedings, one must consider in turn the three claims made in the advertising, namely that the cars in question are new, that they are cheaper, and that they are guaranteed by the manufacturer.
- 12 Before embarking on such an examination, it should be emphasized that these aspects of the advertising are of great practical importance for the business of parallel car importers, and that, as the Advocate General has pointed out in paragraphs 5 and 6 of his Opinion, parallel imports enjoy a certain amount of

protection in Community law because they encourage trade and help reinforce competition.

- 13 On the first point, concerning the claim that the cars in question are new, it should be noted that such advertising cannot be considered misleading within the meaning of Article 2 just because the cars were registered before importation.
- 14 It is when a car is first driven on the public highway, and not when it is registered, that it loses its character as a new car. Moreover, as the Commission has pointed out, registration before importation makes parallel import operations considerably easier.
- 15 It is for the national court, however, to ascertain in the circumstances of the particular case and bearing in mind the consumers to which the advertising is addressed, whether the latter could be misleading in so far as, on the one hand, it seeks to conceal the fact that the cars advertised as new were registered before importation and, on the other hand, that fact would have deterred a significant number of consumers from making a purchase, had they known it.
- 16 On the second point, concerning the claim that the cars are cheaper, such a claim can only be held misleading if it is established that the decision to buy on the part of a significant number of consumers to whom the advertising in question is addressed was made in ignorance of the fact that the lower price of the vehicles was matched by a smaller number of accessories on the cars sold by the parallel importer.
- 17 Thirdly and finally, regarding the claim about the manufacturer's guarantee, it should be pointed out that such information cannot be regarded as misleading advertising if it is true.

- 18 It should be remembered in this respect that in Case 31/85 *ETA v DK Investment* [1985] ECR 3933 the Court held that a guarantee scheme under which a supplier of goods restricts the guarantee to customers of his exclusive distributor places the latter and the retailers to whom he sells in a privileged position as against parallel importers and distributors and must therefore be regarded as having the object or effect of restricting competition within the meaning of Article 85(1) of the Treaty (paragraph 14).
- 19 In answer to the question referred to the Court for a preliminary ruling it must therefore be held that Council Directive 84/450 of 10 September 1984 must be interpreted as meaning that it does not preclude vehicles from being advertised as new, less expensive and guaranteed by the manufacturer when the vehicles concerned are registered solely for the purpose of importation, have never been on the road, and are sold in a Member State at a price lower than that charged by dealers established in that Member State because they are equipped with fewer accessories.

Costs

- 20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Examining Magistrate of the Tribunal de Grande Instance, Bergerac, by a letter of 12 December 1990, hereby rules:

Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States

concerning misleading advertising must be interpreted as meaning that it does not preclude vehicles from being advertised as new, less expensive and guaranteed by the manufacturer when the vehicles concerned are registered solely for the purpose of importation, have never been on the road, and are sold in a Member State at a price lower than that charged by dealers established in that Member State because they are equipped with fewer accessories.

Slynn

Grévisse

Moitinho de Almeida

Rodríguez Iglesias

Zuleeg

Delivered in open court in Luxembourg on 16 January 1992.

J.-G. Giraud

Registrar

Gordon Slynn

President of Chamber
acting as President of the Fifth Chamber