

In this respect, the appellant states, first, that the Court of First Instance erred in law in interpreting Article 6 ter of the Paris Convention literally and out of context, without taking account of the spirit of that provision and of the Convention in general, which, since its review carried out by the Lisbon Act of 31 October 1958, requires extending all the provisions relating to trade marks to service marks, with the exception of certain provisions which are not applicable in the present case.

The appellant claims, second, that the Community legislature itself contests that it is necessary to draw a distinction between trade marks for goods and trade marks for services since Article 29 of the Community Trade Mark Regulation, which transposes Article 4 A of the Paris Convention, relating to rights of priority, mentions explicitly the services covered by a trade mark application.

The appellant observes third that, contrary to what the Court of First Instance held in the judgment under appeal, Article 16 of the Trademark Law Treaty, adopted at Geneva on 27 October 1994, must be interpreted as meaning that it clarifies the field of application of the Paris Convention, without however extending its field of application to situations that that convention excludes in its current wording.

Lastly, the appellant states that, in a recent judgment, the Court of Justice itself admitted, at least implicitly, that the Paris Convention requires equal treatment as between trade marks for goods and trade marks for services.

(¹) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

(²) United Nations Treaty Series, Vol. 828, No 11847, p. 108.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 22 May 2008 — E. Friz GmbH v Carsten von der Heyden

(Case C-215/08)

(2008/C 209/33)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: E. Friz GmbH

Defendant: Carsten von der Heyden

Questions referred

1. Must the first sentence of Article 1(1) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (¹) be interpreted as meaning that it applies to a consumer's entry into a partnership, commercial partnership, association or cooperative if the principal purpose of joining is not to become a member of the partnership, association or cooperative but — as frequently applies in particular in relation to participation in a closed-end real estate fund — participation as a member is simply another means of capital investment or of obtaining services which are typically the object of reciprocal contracts?
2. Must Article 5(2) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises be interpreted as meaning that it precludes a legal effect under national (judge-made) law within the meaning of Article 7 of the directive which states that, where a consumer becomes a member in a doorstep-selling situation, the consequence is that, in the event that the membership is cancelled, the consumer cancelling the membership has a claim against the partnership, association or cooperative, calculated at the time that the cancellation takes effect, to his severance balance, that is, a sum corresponding to the value of his interest in the partnership, association or cooperative at the time of retirement from membership, with the (possible) effect that, as a result of the economic development of the partnership, association or cooperative, he either gets back less than the value of his capital contribution or even finds himself exposed to payment obligations which, because the severance balance is negative, go beyond the loss of the capital contribution paid?

(¹) OJ L 372, 31.12.1985, p. 31.

Action brought on 22 May 2008 — Commission of the European Communities v Ireland

(Case C-221/08)

(2008/C 209/34)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal, W. Mölls, Agents)

Defendant: Ireland

The applicant claims that the Court should:

- declare that by imposing minimum and maximum retail prices for cigarettes, Ireland has failed to comply with its obligations under Article 9(1) of Council Directive 95/59/EC⁽¹⁾ of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco;
- declare that by failing to provide the necessary information on the applicable Irish legislation in order to enable the Commission to fulfil its duty to monitor compliance with Directive 95/59, Ireland has failed to comply with its obligations under Article 10 EC;
- order Ireland to pay the costs.

Pleas in law and main arguments

By virtue of the Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (No 2) Regulations 1986 and the arrangements made in implementation of those regulations with tobacco manufacturers and importers, Ireland imposes a minimum price for cigarettes corresponding to a level no more than 3 % below the weighted average price for cigarettes in the category in question. Moreover, in so far as manufacturers and importers may not set prices more than 3 % above that weighted average price, Ireland also imposes a maximum price for cigarettes. Such a system is contrary to Article 9(1) of directive 95/59, under which tobacco manufacturers are 'free to determine the maximum retail selling price for each of their products'.

Pursuant to Article 10 EC, the Member States have a duty to facilitate the Commission's tasks, in particular by complying with requests for information made in the course of infringement proceedings. The Commission submits that by failing to provide any information on the applicable Irish legislation, despite the Commission's repeated requests, Ireland has failed to comply with its obligations under Article 10 EC.

⁽¹⁾ OJ L 291, p. 40.

Action brought on 21 May 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-222/08)

(2008/C 209/35)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: H. van Vliet and A. Nijenhuis, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

- Declare that, by virtue of the transposition into national law of the provisions on the costing and financing of universal service obligations, the Kingdom of Belgium has failed to fulfil its obligations under Articles 12(1), 13(1), and Annex IV, part A, of Directive 2002/22/EC;
- order Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The objective of Directive 2002/22 is, inter alia, to define the situations in which the market does not satisfactorily meet the needs of end-users and the directive contains provisions regarding the availability of the universal service. Article 12(1) of the directive provides that where national regulatory authorities consider that the provision of universal service may represent an unfair burden on undertakings designated to provide universal service, they are to calculate the net costs of its provision in the manner set out in that article. Annex IV, part A, contains provisions concerning the calculation of the net costs. Article 13(1) provides that where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, the Member States are, upon request from a designated undertaking, to decide to introduce a compensation mechanism.

According to the Commission, Belgium has not correctly transposed the provisions of Article 12(1), Article 13(1) and Annex IV, part A, of the directive. The Belgian legislation provides for no assessment of the question whether the provision of social tariffs in the course of performing the universal service represents an unfair burden for the undertakings concerned. Furthermore the Belgian legislation does not satisfy the requirement concerning the costing of net costs set out more particularly in the last section of Annex IV, part A, to the directive.

Reference for a preliminary ruling from the Verwaltungsgericht Oldenburg (Germany) lodged on 26 May 2008 — Stadt Papenburg v Bundesrepublik Deutschland

(Case C-226/08)

(2008/C 209/36)

Language of the case: German

Referring court

Verwaltungsgericht Oldenburg