

- Article 41(1) precludes the introduction into the national legislation of a Member State of a requirement of a work permit in order for an undertaking established in Turkey to provide services in the territory of that State, if such a permit was not already required at the time of the entry into force of the Additional Protocol;
- it is for the national court to determine whether the national legislation applied to Turkish nationals such as the applicants in the main proceedings is less favourable than that applicable at the time of the entry into force of the Additional Protocol.

(1) OJ C 303 of 27.10.2001, OJ C 348 of 08.12.2001.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 23 October 2003

in Case C-408/01 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden): Adidas-Salomon AG, formerly Adidas AG, Adidas Benelux BV v Fitnessworld Trading Ltd⁽¹⁾

(Directive 89/104/EEC — Article 5(2) — Trade marks with a reputation — Protection against use of a sign in relation to identical or similar goods or services — Degree of similarity between the mark and the sign — Effect on the public — Sign viewed as an embellishment)

(2003/C 304/07)

(Language of the case: Dutch)

(Provisional translation; the definitive translation will be published in the European Court Reports)

court between Adidas-Salomon AG, formerly Adidas AG, Adidas Benelux BV and Fitnessworld Trading Ltd, on the interpretation of Article 5(2) of First Council Directive 89/104/EEC of 21 December 1988 approximating the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), the Court (Sixth Chamber), composed of: J.-P. Puissechot, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 23 October 2003, in which it has ruled:

1. A Member State, where it exercises the option provided by Article 5(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, is bound to grant the specific protection in question in cases of use by a third party of a later mark or sign which is identical with or similar to the registered mark with a reputation, both in relation to goods or services which are not similar and in relation to goods or services which are identical with or similar to those covered by that mark.
2. The protection conferred by Article 5(2) of Directive 89/104 is not conditional on a finding of a degree of similarity between the mark with a reputation and the sign such that there exists a likelihood of confusion between them on the part of the relevant section of the public. It is sufficient for the degree of similarity between the mark with a reputation and the sign to have the effect that the relevant section of the public establishes a link between the sign and the mark.
3. The fact that a sign is viewed as an embellishment by the relevant section of the public is not, in itself, an obstacle to the protection conferred by Article 5(2) of Directive 89/104 where the degree of similarity is none the less such that the relevant section of the public establishes a link between the sign and the mark. By contrast, where, according to a finding of fact by the national court, the relevant section of the public views the sign purely as an embellishment, it necessarily does not establish any link with a registered mark, with the result that one of the conditions of the protection conferred by Article 5(2) of Directive 89/104 is then not satisfied.

(1) OJ C 3 of 5.1.2002.

In Case C-408/01: Reference to the Court under Article 234 EC by the Hoge Raad der Nederlanden (Netherlands) for a preliminary ruling in the proceedings pending before that