



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

5 June 2014*

(Judicial cooperation in civil matters — Regulations (EC) No 40/94 and No 44/2001 — Community trade mark — Article 93(5) of Regulation (EC) No 40/94 — International jurisdiction relating to infringement — Determination of the place where the harmful event occurred — Cross-border participation by several persons in a single unlawful act)

In Case C-360/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 28 June 2012, received at the Court on 31 July 2012, in the proceedings

Coty Germany GmbH, formerly Coty Prestige Lancaster Group GmbH,

v

First Note Perfumes NV,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as a judge of the Fourth Chamber, M. Safjan (Rapporteur), J. Malenovský and A. Prechal, Judges,

Advocate General: N. Jääskinen,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 19 September 2013,

after considering the observations submitted on behalf of:

- Coty Germany GmbH, formerly Coty Prestige Lancaster Group GmbH, by K. Schmidt-Hern and U. Hildebrandt, Rechtsanwälte,
- First Note Perfumes NV, by M. Dinnes, Rechtsanwalt,
- the German Government, by F. Wannek, J. Kemper and T. Henze, acting as Agents,
- the United Kingdom Government, by A. Robinson, acting as Agent,
- the Swiss Government, by D. Klingele, acting as Agent,
- the European Commission, by F. Bulst and M. Wilderspin, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 21 November 2013,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 93(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), and of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).
- 2 The request has been made in proceedings between Coty Germany GmbH ('Coty Germany'), formerly Coty Prestige Lancaster Group GmbH, and First Note Perfumes NV ('First Note') concerning an alleged infringement of a Community trade mark and of the Law against unfair competition (*Gesetz gegen den unlauteren Wettbewerb*), on account of the sale in Belgium of counterfeit products to a German trader which resold them in Germany.

Legal context

Regulation No 40/94

- 3 The 15th recital in the preamble to Regulation No 40/94 reads:

'Whereas decisions regarding the validity and infringement of Community trade marks must have effect and cover the entire area of the Community, as this is the only way of preventing inconsistent decisions on the part of the courts and the Office [for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)], and of ensuring that the unitary character of Community trade marks is not undermined; whereas the rules contained in the [Convention of 27 September 1968 on] Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [(OJ 1978 L 304, p. 36, "the Brussels Convention")] will apply to all actions at law relating to Community trade marks, save where this Regulation derogates from those rules.'
- 4 Article 9 of that regulation, entitled 'Rights conferred by a Community trade mark', provides in paragraphs 1 and 3:

'1. A Community trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:

 - (a) any sign which is identical with the Community trade mark in relation to goods or services which are identical with those for which the Community trade mark is registered;
 - (b) any sign where, because of its identity with or similarity to the Community trade mark and the identity or similarity of the goods or services covered by the Community trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the trade mark;
 - (c) any sign which is identical with or similar to the Community trade mark in relation to goods or services which are not similar to those for which the Community trade mark is registered, where the latter has a reputation in the Community and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the Community trade mark.

...

3. The rights conferred by a Community trade mark shall prevail against third parties from the date of publication of registration of the trade mark. Reasonable compensation may, however, be claimed in respect of matters arising after the date of publication of a Community trade mark application, which matters would, after publication of the registration of the trade mark, be prohibited by virtue of that publication. The court seized of the case may not decide upon the merits of the case until the registration has been published.'

5 Article 14(2) of that regulation states:

'This Regulation shall not prevent actions concerning a Community trade mark being brought under the law of Member States relating in particular to civil liability and unfair competition.'

6 Article 90 of that regulation, entitled 'Application of the Convention on Jurisdiction and Enforcement', is worded as follows:

'1. Unless otherwise specified in this Regulation, the [Brussels Convention], as amended by the Conventions on the Accession to that Convention of the States acceding to the European Communities, the whole of which Convention and of which Conventions of Accession are hereinafter referred to as the "Convention on Jurisdiction and Enforcement", shall apply to proceedings relating to Community trade marks and applications for Community trade marks, as well as to proceedings relating to simultaneous and successive actions on the basis of Community trade marks and national trade marks.

2. In the case of proceedings in respect of the actions and claims referred to in Article 92:

(a) Articles 2, 4, 5(1), (3), (4) and (5) and Article 24 of the Convention on Jurisdiction and Enforcement shall not apply;

...'

7 Article 91(1) of that regulation states:

'The Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance, hereinafter referred to as "Community trade mark courts", which shall perform the functions assigned to them by this Regulation.'

8 In accordance with Article 92 of that regulation, headed 'Jurisdiction over infringement and validity':

'The Community trade mark courts shall have exclusive jurisdiction:

(a) for all infringement actions and — if they are permitted under national law — actions in respect of threatened infringement relating to Community trade marks;

(b) for actions for declaration of non-infringement, if they are permitted under national law;

(c) for all actions brought as a result of acts referred to in Article 9(3), second sentence;

(d) for counterclaims for revocation or for a declaration of invalidity of the Community trade mark pursuant to Article 96.'

9 Article 93 of that regulation, headed ‘International jurisdiction’, provides:

‘1. Subject to the provisions of this Regulation as well as to any provisions of the Convention on Jurisdiction and Enforcement applicable by virtue of Article 90, proceedings in respect of the actions and claims referred to in Article 92 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.

2. If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in which he has an establishment.

3. If neither the defendant nor the plaintiff is so domiciled or has such an establishment, such proceedings shall be brought in the courts of the Member State where [OHIM] has its seat.

...

5. Proceedings in respect of the actions and claims referred to in Article 92, with the exception of actions for a declaration of non-infringement of a Community trade mark, may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened, or in which an act within the meaning of Article 9(3), second sentence, has been committed.’

10 Article 94 of that regulation, entitled ‘Extent of jurisdiction’, provides in paragraph 2:

‘A Community trade mark court whose jurisdiction is based on Article 93(5) shall have jurisdiction only in respect of acts committed or threatened within the territory of the Member State in which that court is situated.’

Regulation No 44/2001

11 According to Recital 2 in the preamble to Regulation No 44/2001, that regulation is intended, in the interests of the sound operation of the internal market, to implement ‘[p]rovisions to unify the rules of conflict of jurisdiction in civil and commercial matters and to simplify the formalities with a view to rapid and simple recognition and enforcement of judgments from Member States bound by this Regulation ...’

12 Recitals 11, 12 and 15 in the preamble to that regulation state:

‘(11) The rules of jurisdiction must be highly predictable and founded on the principle that jurisdiction is generally based on the defendant’s domicile and jurisdiction must always be available on this ground save in a few well-defined situations in which the subject-matter of the litigation or the autonomy of the parties warrants a different linking factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

(12) In addition to the defendant’s domicile, there should be alternative grounds of jurisdiction based on a close link between the court and the action or in order to facilitate the sound administration of justice.

...

(15) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in two Member States. ...'

13 The rules of jurisdiction are set out in Chapter II of that regulation, in Articles 2 to 31.

14 Chapter II, section 1, entitled 'General provisions', includes Article 2(1), which is worded as follows:

'Subject to the provisions of this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

15 Article 3(1) of that regulation, which belongs to the same section, provides:

'Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.'

16 Article 5(3) of that regulation, which is included in section 2 of chapter 2 thereof, entitled 'Special jurisdiction', provides:

'A person domiciled in a Member State may, in another Member State, be sued:

...

3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.'

17 Article 68(2) of that regulation provides:

'In so far as this Regulation replaces the provisions of the Brussels Convention between Member States, any reference to the Convention shall be understood as a reference to this Regulation.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 According to the order for reference, Coty Germany, established in Mainz (Germany), produces and distributes perfumes and cosmetic products. It is the proprietor of rights to the three-dimensional Community trade mark (black/white) No 003788767, representing a bottle, registered with respect to perfumes.

19 Coty Germany markets the ladies' perfume 'Davidoff Cool Water Woman' in a coloured bottle with lettering on it reproducing that Community trade mark.

20 First Note, a company established in Oelegem (Belgium), is a perfume wholesaler. In January 2007, it sold a perfume called 'Blue Safe for Women' to Stefan P. Warenhandel ('Stefan P. '), whose place of business is in Germany. The order for reference states that Stefan P. took delivery of those products at the premises of First Note in Belgium and subsequently resold them in Germany.

21 Coty Germany brought an action against First Note, claiming that the distribution by First Note of that perfume in a bottle similar to that represented in the trade mark referred to above constituted an infringement of a trade mark, unlawful comparative advertising and unfair imitation.

22 That action was dismissed both at first instance and on appeal. It was held on appeal that the German courts had no international jurisdiction. Coty Germany brought an appeal on a point of law before the Bundesgerichtshof. In support of that appeal, it relied on Community trade mark No 003788767 and

the fact that, under the Law against unfair competition, such commercial practices are prohibited and, in the alternative, it relied, in the event that such a cumulative claim was not possible, primarily on the Community trade mark and secondly on the German Law against unfair competition.

23 In those circumstances the Bundesgerichtshof decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

1. Is Article 93(5) of Regulation ... No 40/94 to be interpreted as meaning that an act of infringement is committed in one Member State (Member State A), within the meaning of [that provision], in the case where, as a result of an act in another Member State (Member State B), there is participation in the infringement in the first-named Member State (Member State A)?
2. Is Article 5(3) of Regulation ... No 44/2001 to be interpreted as meaning that the harmful event occurred in one Member State (Member State A) if the tortious act which is the subject of the action or from which claims are derived was committed in another Member State (Member State B) and consists in participation in the tortious act (principal act) which took place in the first-named Member State (Member State A)?

Consideration of the questions referred

Question 1

- 24 By question 1, the referring court asks, in essence, whether the concept of ‘the Member State in which the act of infringement has been committed’ in Article 93(5) of Regulation No 40/94 must be interpreted as meaning that, in the event of a sale and delivery of a counterfeit product in one Member State, followed by a resale by the purchaser in another Member State, the courts of the latter State, in accordance with that provision, have jurisdiction to hear an infringement action against the original seller which did not itself act in the Member State where the court seised is situated.
- 25 As is apparent from the order for reference, the referring court questions whether the concept of ‘Member State in which the act of infringement has been committed’ in Article 93(5) of Regulation No 40/94 must be interpreted in a manner analogous to that of the ‘place where the harmful event occurred’ in Article 5(3) of Regulation No 44/2001.
- 26 In that regard, it should be noted that, notwithstanding the principle that Regulation No 44/2001 applies to court proceedings relating to a Community trade mark, the application of certain provisions of that regulation to proceedings in respect of the actions and claims referred to in Article 92 of Regulation No 40/94 is precluded under Article 90(2) of that regulation.
- 27 In the light of that exclusion, the jurisdiction of the Community trade mark courts provided for in Article 91(1) of Regulation No 40/94 to decide actions and claims referred to in Article 92 of that regulation results from rules directly provided for by that regulation, which, as was stated by the Advocate General in point 36 of his Opinion, have the character of *lex specialis* in relation to the rules provided for by Regulation No 44/2001.
- 28 More specifically, under the combined provisions of Articles 90(2) and 92 of Regulation No 40/94, the application of Article 5(3) of the Brussels Convention, to which Article 5(3) of Regulation No 44/2001 corresponds, to Community trade mark infringement actions is expressly precluded.
- 29 In that regard, it should be noted that Article 93 of Regulation No 40/94 provides for several grounds of international jurisdiction.

- 30 In particular, Article 93(5) of Regulation No 40/94 establishes, inter alia, jurisdiction in favour of the courts of the Member State in which the infringement was committed or is threatened.
- 31 With regard to the interpretation of Article 93(5), in the light of the findings in paragraphs 27 and 28 above, the concept of ‘the Member State in which the act of infringement has been committed or threatened’, referred to in that provision, must be interpreted independently of the concept of ‘the place where the harmful event occurred or may occur’ referred to in Article 5(3) of Regulation No 44/2001.
- 32 Consequently, the duality of linking factors, namely the place of the event giving rise to the damage and that where the damage occurred, accepted by the Court’s case-law relating to Article 5(3) of Regulation No 44/2001 (see Case 21/76 *Bier*, EU:C:1976:166, paragraph 19, and, most recently, Case C-45/13 *Kainz*, EU:C:2014:7, paragraph 23 and the case-law cited), cannot automatically apply to the interpretation of the concept of ‘the Member State in which the act of infringement has been committed or threatened’ in Article 93(5) of Regulation No 40/94.
- 33 In order to determine whether an independent interpretation of the latter provision nevertheless leads to an acknowledgement of such a duality of linking factors, it is necessary, in accordance with the Court’s settled case-law, to take into account not only the wording of that provision, but also its context and purpose.
- 34 With regard to the wording of Article 93(5) of Regulation No 40/94, the concept of ‘the Member State in which the act of infringement has been committed’ implies, as the Advocate General stated in point 31 of his Opinion, that that linking factor relates to active conduct on the part of the person causing that infringement. Therefore, the linking factor provided for by that provision refers to the Member State where the act giving rise to the alleged infringement occurred or may occur, not the Member State where that infringement produces its effects.
- 35 It should also be noted that the existence of jurisdiction under Article 93(5) based on the place where the alleged infringement produces its effects would conflict with the wording of Article 94(2) of that regulation, which limits the jurisdiction of Community trade mark courts under Article 93(5) to acts committed or threatened in the Member State where the court seised is situated.
- 36 Furthermore, as the Advocate General stated in points 28 and 29 of his Opinion, both the origin and the context of Regulation No 40/94 confirm the intention of the EU legislature to derogate from the rule on jurisdiction provided for in Article 5(3) of Regulation No 44/2001 in the light, in particular, of the inability of the rule on jurisdiction to respond to the specific problems relating to the infringement of a Community trade mark.
- 37 Consequently, jurisdiction under Article 93(5) of Regulation No 40/94 may be established solely in favour of Community trade mark courts in the Member State in which the defendant committed the alleged unlawful act.
- 38 In the light of the foregoing, the answer to Question 1 is that the concept of the ‘Member State in which the act of infringement has been committed’ in Article 93(5) of Regulation No 40/94 must be interpreted as meaning that, in the event of a sale and delivery of a counterfeit product in one Member State, followed by a resale by the purchaser in another Member State, that provision does not allow jurisdiction to be established to hear an infringement action against the original seller who did not himself act in the Member State where the court seised is situated.

Question 2

- 39 By question 2, the referring court asks, in essence, whether Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the event of an allegation of unlawful comparative advertising or unfair imitation of a sign protected by a Community trade mark, prohibited by the law against unfair competition of the Member State in which the court seised is situated, that provision attributes jurisdiction to hear an action for damages based on that national law against one of the presumed perpetrators who is established in another Member State and is alleged to have committed the infringement in that State.
- 40 In that regard, it should be noted that Article 14(2) of Regulation No 40/94 provides expressly that actions concerning a Community trade mark may be brought under the law of Member States relating in particular to civil liability and unfair competition.
- 41 Those actions do not come within the jurisdiction of the Community trade mark courts. The jurisdiction to hear such actions is therefore not governed by Regulation No 40/94. Therefore, the jurisdiction to hear actions based on national law against unfair competition must be determined on the basis of Regulation No 44/2001.
- 42 Therefore, with regard to a claim based on the infringement of the national Law against unfair competition, Article 5(3) of Regulation No 44/2001 is applicable in order to establish the jurisdiction of the court seised.
- 43 With regard to the interpretation of Article 5(3) of Regulation No 44/2001, it should be recalled at the outset that the provisions of that regulation must be interpreted independently, by reference to its scheme and purpose (Case C-228/11 *Melzer* EU:C:2013:305, paragraph 22 and the case-law cited).
- 44 It is only by way of derogation from the fundamental principle laid down in Article 2(1) of Regulation No 44/2001, attributing jurisdiction to the courts of the Member States in which the defendant is domiciled, that Section 2 of Chapter II makes provision for certain special jurisdictional rules, such as that laid down in Article 5(3) of that regulation (*Melzer* EU:C:2013:305, paragraph 23).
- 45 In so far as the jurisdiction of the court of the place where the harmful event occurred or may occur constitutes a rule of special jurisdiction, it must be interpreted restrictively and cannot give rise to an interpretation going beyond the cases expressly envisaged by that regulation (*Melzer* EU:C:2013:305, paragraph 24).
- 46 The fact remains that the expression ‘place where the harmful event occurred or may occur’ in Article 5(3) of Regulation No 44/2001 is intended to cover both the place where the damage occurred and the place of the event giving rise to it, so that the defendant may be sued, at the option of the applicant, in the courts for either of those places (*Melzer* EU:C:2013:305, paragraph 25).
- 47 In that connection, according to settled case-law, the rule of special jurisdiction laid down in Article 5(3) of Regulation No 44/2001 is based on the existence of a particularly close linking factor between the dispute and the courts of the place where the harmful event occurred or may occur, which justifies the attribution of jurisdiction to those courts for reasons relating to the sound administration of justice and the efficacious conduct of proceedings (*Melzer* EU:C:2013:305, paragraph 26).
- 48 Since the identification of one of the linking factors recognised by the case-law set out in paragraph 46 above enables the court objectively best placed to determine whether the elements establishing the liability of the person sued are present to take jurisdiction, it follows that only the court in the

jurisdiction of which the relevant linking factor is situated may validly be seised (see, to that effect, Case C-133/11 *Folien Fischer and Fofitec* EU:C:2012:664, paragraph 52, and *Melzer* EU:C:2013:305, paragraph 28).

- 49 With regard to the place where the causal event occurred, it is apparent from the order for reference that several perpetrators are presumed to have caused the alleged harmful event and that First Note, which is the single defendant in the main proceedings, acted solely in Belgium and, therefore, outside the jurisdiction of the court before which it was sued.
- 50 As the Court has already held, in circumstances in which only one among several presumed perpetrators of the alleged harmful act is sued before a court within whose jurisdiction he has not acted, the event giving rise to the damage may not be regarded as taking place within the jurisdiction of that court for the purpose of Article 5(3) of Regulation No 44/2001 (see *Melzer* EU:C:2013:305, paragraph 40).
- 51 Accordingly, Article 5(3) of that regulation does not allow jurisdiction to be established, on the basis of the place of the event giving rise to the damage, to hear an action for damages based on the law on combating unfair competition of the Member State in which the court seised is situated against one of the presumed perpetrators of that damage who has not acted within the jurisdiction of the court seised (see *Melzer* EU:C:2013:305, paragraph 41).
- 52 However, in contrast to the *Melzer* case (EU:C:2013:305), in the present case the referring court has not limited its question to the interpretation of Article 5(3) of that regulation for the sole purpose of establishing the jurisdiction of the German courts on the basis of the place of the event giving rise to the alleged damage.
- 53 Accordingly, it must also be examined whether, in circumstances such as those at issue in the main proceedings, where several supposed perpetrators of the alleged damage have acted in different Member States, Article 5(3) of Regulation No 44/2001 allows jurisdiction to be established, on the basis of the place where the damage occurred, for the courts of a Member State to hear an action for damages based on the law on combating unfair competition of that Member State, in which the court seised is situated, against one of the presumed perpetrators of the damage who did not act within the jurisdiction of the court seised.
- 54 It is settled case-law that the place where the damage occurred is the place where the event which may give rise to liability in tort, delict or quasi-delict resulted in damage (see Case C-189/08 *Zuid-Chemie* EU:C:2009:475, paragraph 26).
- 55 With regard to damage resulting from infringements of an intellectual and commercial property right, the Court has stated that the occurrence of damage in a particular Member State is subject to the protection, in that State, of the right in respect of which infringement is alleged (see Case C-523/10 *Wintersteiger* EU:C:2012:220, paragraph 25, and C-170/12 *Pinckney*, EU:C:2013:635, paragraph 33).
- 56 That requirement is capable of being applied to cases in which the protection of such a right by means of a national law against unfair competition is at issue.
- 57 It must therefore be held that, in circumstances such as those of the main proceedings, an action relating to an infringement of that law may be brought before the German courts, to the extent that the act committed in another Member State caused or may cause damage within the jurisdiction of the court seised.

58 In that regard, it is for the court seised to assess, in the light of the evidence at its disposal, the extent to which the sale of the ‘Blue Safe for Women’ perfume to Stefan P., which occurred in Belgium, was capable of infringing provisions of the German law against unfair competition and, thereby, of causing damage within the jurisdiction of that court.

59 In the light of the above considerations, the answer to Question 2 is that Article 5(3) of Regulation No 44/2001 must be interpreted as meaning that, in the event of an allegation of unlawful comparative advertising or unfair imitation of a sign protected by a Community trade mark, prohibited by the law against unfair competition of the Member State in which the court seised is situated, that provision does not allow jurisdiction to be established, on the basis of the place where the event giving rise to the damage resulting from the infringement of that law occurred, for a court in that Member State where the presumed perpetrator who is sued there did not himself act there. By contrast, in such a case, that provision does allow jurisdiction to be established, on the basis of the place of occurrence of damage, to hear an action for damages based on that national law brought against a person established in another Member State who is alleged to have committed, in that State, an act which caused or may cause damage within the jurisdiction of that court.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **The concept of ‘the Member State in which the act of infringement has been committed’ in Article 93(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that, in the event of a sale and delivery of a counterfeit product in one Member State, followed by a resale by the purchaser in another Member State, that provision does not allow jurisdiction to be established to hear an infringement action against the original seller who did not himself act in the Member State where the court seised is situated.**
2. **Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of an allegation of unlawful comparative advertising or unfair imitation of a sign protected by a Community trade mark, prohibited by the law against unfair competition (Gesetz gegen den unlauteren Wettbewerb) of the Member State in which the court seised is situated, that provision does not allow jurisdiction to be established, on the basis of the place where the event giving rise to the damage resulting from the infringement of that law occurred, for a court in that Member State where the presumed perpetrator who is sued there did not himself act there. By contrast, in such a case, that provision does allow jurisdiction to be established, on the basis of the place of occurrence of damage, to hear an action for damages based on that national law brought against a person established in another Member State and who is alleged to have committed, in that State, an act which caused or may cause damage within the jurisdiction of that court.**

[Signatures]