



Court of Justice of the European Union

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Judgment in Joined Cases C-446/09

Koninklijke Philips Electronics NV v Lucheng Meijing Industrial Company Ltd and others and C-495/09 Nokia Corporation v Her Majesty's Commissioners of Revenue and Customs

Press and Information

The Court specifies the conditions under which goods coming from non-member States that are imitations or copies of goods protected in the EU by intellectual property rights may be detained by the customs authorities of the Member States

Where those goods are in customs warehousing or in transit in the EU, they can be classified as 'counterfeit' or 'pirated' goods if it is proven that they are intended to be put on sale in the EU

These two cases concern the interpretation of the EU rules on the conduct of customs authorities faced with possible infringements of intellectual property rights by goods coming from non-member States that are placed in external transit or customs warehousing on the customs territory of the EU. Those suspensive procedures enable non-Community goods to avoid being subject to import duties and other taxes or to commercial policy measures.

The facts in Case C-446/09

In 2002, the Belgian customs authorities inspected a cargo – which lacked a stated destination and was warehoused in the port of Antwerp (Belgium) – of electric shavers from Shanghai (China) resembling designs of shavers developed by Philips. Those designs are protected by registrations granting exclusive intellectual property rights to Philips in a number of States, including Belgium. Suspecting that the goods were 'pirated goods', the Belgian customs authorities detained them.

Philips brought an action against Lucheng Ltd, Far East Sourcing Ltd and Röhlig Hong Kong Ltd, which were involved in the manufacture, marketing and transport of those shavers, before the Rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp). Philips seeks in particular a ruling that those undertakings infringed its exclusive right over those designs. Philips also seeks an order that those undertakings pay it damages and that the detained goods be destroyed.

The facts in Case C-495/09

In July 2008, the customs authorities of the United Kingdom (HM Revenue & Customs, 'HMRC') inspected a consignment of goods – mobile telephones and mobile telephone accessories – at London Heathrow Airport (United Kingdom) which had come from Hong Kong (China) and was destined for Colombia. Those goods bore a sign identical to a Nokia trade mark. Suspecting that the goods were fake, HMRC sent samples to Nokia, which confirmed that the goods were indeed fake and asked HMRC to detain the consignment.

That request was refused by HMRC on the ground that goods in transit from one non-member State to another cannot be regarded as 'counterfeit goods' for the purposes of European Union law and therefore cannot be detained. Nokia challenged that refusal of detention before the courts of the United Kingdom.

By their questions, the Rechtbank van eerste aanleg te Antwerpen and the Court of Appeal (England and Wales), Civil Division, ask the Court of Justice whether goods coming from a non-member State which are in transit or stored in a customs warehouse in the European Union, can be classified as 'counterfeit goods' or 'pirated goods' for the purposes of European Union law

merely on the basis of the fact that they are brought into the customs territory of the European Union, without being marketed or sold there.

In its judgment delivered today, the Court first examines the conditions for temporary detention of goods placed under a suspensive procedure. It reiterates that goods from non-member States placed under a suspensive customs procedure cannot, merely by the fact of being so placed, infringe intellectual property rights applicable in the European Union. However, **those rights may be infringed where, during their placement under a suspensive procedure in the customs territory of the European Union, or even before their arrival in that territory, goods coming from non-member States are the subject of a commercial act directed at European Union consumers, such as a sale, offer for sale or advertising.**

In addition to the existence of such a commercial act, other circumstances can also lead to temporary detention by the customs authorities of the Member States. Thus, **a customs authority which has established the presence in warehousing or in transit of goods which are an imitation or a copy of a product protected in the European Union by an intellectual property right can legitimately act when there are indications before it that one or more of the operators involved in the manufacture, consignment or distribution of the goods, while not having yet begun to direct the goods towards European Union consumers, are about to do so or are disguising their commercial intentions.**

Such indications may include the fact that the destination of the goods is not declared whereas the suspensive procedure requested requires such a declaration, the lack of precise or reliable information as to the identity or address of the manufacturer or consignor of the goods, a lack of cooperation with the customs authorities or the discovery of documents or correspondence concerning the goods in question suggesting that there is liable to be a diversion of those goods to European Union consumers. **Such suspicion must, in all instances, be based on the circumstances of each particular case.**

Secondly, the Court specifies the material which the competent authorities must have before them in order to ascertain that goods already detained infringe European Union intellectual property rights. Thus, the Court considers that goods in respect of which **it is not proven, after substantive examination, that they are intended to be put on sale in the European Union cannot be classified as 'counterfeit goods' and 'pirated goods'.**

Certain evidence enables such an infringement to be proved, including, in particular, the existence of a sale of goods to a customer in the European Union, of an offer for sale or advertising addressed to consumers in the European Union, or of documents or correspondence concerning the goods in question showing that diversion of those goods to European Union consumers is envisaged.

Finally, the Court states that, in the absence of proof of infringement of an intellectual property right, goods placed under a suspensive procedure in the European Union can, as appropriate, be seized in other situations covered by the European Union Customs Code, such as where the goods in question pose a risk to health and safety.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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