

Case C-337/95

Parfums Christian Dior SA and Parfums Christian Dior BV v Evora BV

(Reference for a preliminary ruling
from the Hoge Raad der Nederlanden)

(Trade mark rights and copyright — Action brought by the owner of those rights
to stop a reseller advertising the further commercialization of goods — Perfume)

Opinion of Advocate General Jacobs delivered on 29 April 1997 I - 6016
Judgment of the Court, 4 November 1997 I - 6034

Summary of the Judgment

1. *Preliminary rulings — Reference to the Court — National court or tribunal for the purposes of Article 177 of the Treaty — Concept — Benelux Court of Justice — Included (EC Treaty, Art. 177)*
2. *Preliminary rulings — Reference to the Court — Question of interpretation of Directive 89/104 raised in proceedings concerning the interpretation of the Uniform Benelux Law on Trade Marks — Obligation, of both the Benelux Court of Justice and national courts giving judgments against which no appeal lies, to make a reference — Limits (EC Treaty, Art. 177, third para.; Council Directive 89/104)*

3. *Approximation of laws — Trade marks — Directive 89/104 — Product put on the market in a Member State by the proprietor of a trade mark or with his consent — Use of the trade mark by a reseller for advertising purposes — Whether permissible*
(EC Treaty, Art. 36; Council Directive 89/104, Arts 5 and 7)
 4. *Approximation of laws — Trade marks — Directive 89/104 — Product put on the market in a Member State by the proprietor of a trade mark or with his consent — Opposition by the proprietor of the trade mark to its use by a reseller for advertising purposes — Not permissible — Exception — Serious damage caused to the reputation of the trade mark*
(Council Directive 89/104, Art. 7(2))
 5. *Free movement of goods — Industrial and commercial property — Trade mark rights and copyright — Product put on the market in a Member State by the proprietor of a trade mark or with his consent — Opposition by the proprietor to the use of the product by a reseller for advertising purposes — Not permissible — Exception — Serious damage caused to the reputation of the product*
(EC Treaty, Arts 30 and 36)
1. As a court common to more than one Member State which has the task of ensuring that the legal rules common to the three Benelux States are applied uniformly and reference to which is a step in the proceedings before the national courts leading to definitive interpretations of the common Benelux rules, the Benelux Court of Justice must be regarded as entitled to refer questions to the Court of Justice for a preliminary ruling. To allow such a court, faced with the task of interpreting Community rules in the performance of its function, to follow the procedure provided for by Article 177 of the Treaty serves the purpose of that provision, which is to ensure the uniform interpretation of Community law.
 - the laws of the Member States relating to trade marks, is raised in proceedings in one of the Benelux Member States concerning the interpretation of the Uniform Benelux Law on Trade Marks, a court against whose decisions there is no remedy under national law, as is the case with both the Benelux Court of Justice and the Hoge Raad der Nederlanden, must make a reference to the Court of Justice under the third paragraph of Article 177 of the Treaty. However, that obligation loses its purpose and is thus emptied of its substance when the question raised is substantially the same as a question which has already been the subject of a preliminary ruling in the same national proceedings.
 2. Where a question relating to the interpretation of Directive 89/104, approximating
 3. On a proper interpretation of Articles 5 and 7 of Directive 89/104, when trade-

-marked goods have been put on the Community market by the proprietor of the trade mark or with his consent, a reseller, besides being free to resell those goods, is also free to make use of the trade mark in order to bring to the public's attention the further commercialization of those goods. If the right to make use of a trade mark in order to attract attention to further commercialization were not exhausted in the same way as the right of resale, the latter would be made considerably more difficult and the purpose of the 'exhaustion of rights' rule laid down in Article 7 would thus be undermined.

A balance must be struck between the legitimate interest of the proprietor of the trade mark in being protected against resellers using his trade mark for advertising in a manner which could damage the reputation of the trade mark and the reseller's legitimate interest in being able to resell the goods in question by using advertising methods which are customary in his sector of trade. In the case of prestigious, luxury goods, the reseller must not act unfairly in relation to the legitimate interests of the proprietor of the trade mark.

4. The proprietor of a trade mark may not rely on Article 7(2) of Directive 89/104 to oppose the use of the trade mark by a reseller who habitually markets articles of the same kind, but not necessarily of the same quality, as the trade-marked goods, in ways customary in the reseller's sector of trade, for the purpose of bringing to the public's attention the further commercialization of those goods, unless it is established that, having regard to the specific circumstances of the case, the use of the trade mark for this purpose seriously damages the reputation of the trade mark.
5. On a proper interpretation of Articles 30 and 36 of the Treaty, the proprietor of a trade mark or holder of copyright may not oppose their use by a reseller who habitually markets articles of the same kind, but not necessarily of the same quality, as the protected goods, in ways customary in the reseller's sector of trade, for the purpose of bringing to the public's attention the further commercialization of those goods, unless it is established that, having regard to the specific circumstances of the case, the use of those goods for that purpose seriously damages their reputation.