

Case C-667/19**Summary of a request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

9 September 2019

Referring court:

Sąd Okręgowy w Warszawie (Regional Court in Warsaw, Poland)

Date of the decision to refer:

12 July 2019

Applicant:

A.M.

Defendant:

E.M.

Subject matter of the case in the main proceedings

The proceedings before the referring court concern the scope of requirements relating to the description of cosmetic products under Regulation No 1223/2009.

Subject matter and legal basis of the reference

The referring court seeks to establish how the essential functions of a cosmetic product should be construed in light of Regulation No 1223/2009 and whether, as regards the required information concerning cosmetic products, it is possible to refer the buyer to a company's catalogue.

Questions referred

1. In so far as it provides that the container and packaging of cosmetic products should bear in indelible, easily legible and visible lettering information as to the function of the cosmetic product, unless it is clear from its presentation, should Article 19(1)(f) of Regulation (EC) No 1223/2009 of the European Parliament and

of the Council of 30 November 2009 on cosmetic products be interpreted as referring to the essential functions of cosmetic products within the meaning of Article 2(1)(a) of the Regulation, that is, cleaning (keeping clean), nurturing and protecting (keeping in good condition), perfuming and beautifying (changing appearance), or should more detailed functions be stated, enabling the properties of the cosmetic product in question to be determined?

2. Should Article 19(2) and recital 46 of Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products be interpreted as meaning that the information referred to in Article 19(1)(d), (g) and (f), namely, precautions, ingredients and functions, may be stated in a company's catalogue which also includes other products, by placing the symbol set out in point 1 of Annex VII on the packaging?

Applicable provisions of Community law

Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products, in particular Article 2(1)(a), Article 19(1)(d), (g) and (f), Article 19(2) and point 1 of Annex VII.

Applicable provisions of national law

Ustawa o kosmetykach z dnia 30 marca 2001 r. [Law on Cosmetics of 30 March 2001], in particular Article 2 and Article 6.

Brief outline of the facts and procedure

1. The applicant A.M. and the defendant E.M. maintained business relations and in this connection the applicant purchased from the defendant, as distributor, cosmetics manufactured by a U.S. company.

2. The defendant provided the applicant with retail booklets for each cosmetic product as well as with training scripts. The applicant was informed that each cosmetic product bore a reference to the booklet and that those were U.S. products whose descriptions had not been translated into Polish. On 28 January 2016, the applicant purchased from the defendant, among others, 40 retail catalogues for PLN 0.01 and 10 catalogues for PLN 0.01. On the following day, 29 January 2016, she purchased cosmetics, including creams, facial masks and powders, for PLN 3 184.25 gross.

3. The product packaging contained information about the responsible entity, the original name of the cosmetic, its ingredients, and the expiry date and serial number; it also included the 'hand with a book' graphic symbol, which referred to the catalogue in Polish.

4. The applicant repudiated the contract because the packaging did not indicate the function of the cosmetics in question in Polish, and information on their properties and ingredients was only provided in the catalogue. The defendant gave an assurance that the products were marked in accordance with the laws in force in Poland.

5. The court of first instance dismissed the action. It examined the substance of the applicant's claim and of the defendant's pleas in law in terms of statutory warranty for defects. The district court held that the applicant's statements that she had no knowledge that the products were not marked in Polish until the day she received them were not credible given that the applicant acknowledged that the parties had already cooperated in the past.

6. The court also found that in that case the outer unit packaging bore a graphic symbol which referred to the information enclosed. Additionally, the district court clarified that the applicant failed to report the product defect immediately and that the cosmetics were returned in damaged packaging.

7. The applicant appealed against that judgment to the regional court, challenging the judgment in its entirety. The applicant claimed that the court of first instance had erred in its assessment of the evidence as to whether the applicant had been informed of the absence of information in Polish on the unit packaging concerning the cosmetics' functions and that it had erred in finding that the applicant had failed to return the cosmetics to the defendant in the condition in which they had been received.

8. The applicant also challenged the court's finding that a reference to a (paid) catalogue constituted correct marking of the cosmetics sold to the applicant where it was not apparent from the evidence produced in the case that that information could not have been placed on individual products.

Essential arguments of the parties in the main proceedings

9. The applicant claims that the cosmetics intended for retail sale which she had received in the final delivery did not bear on their unit packaging descriptions in Polish in accordance with the law in force in Poland regarding the marketing of cosmetics (Article 19(1)(f) and Article 19(5) of Regulation 1223/2009/EC).

10. The defendant contends that the products bore the 'hand with a book' symbol, which refers the buyer to an external leaflet: in this case the catalogue in Polish that was supplied with each product in accordance with Article 19 of the Regulation. The catalogue contained a full description in Polish of the products, their functions, contraindications, application and ingredients.

Brief statement of and reasons for the reference

11. The doubts of the referring court concern the interpretation of Article 19(1)(f) of Regulation No 1223/2009.

12. Article 19(1) of the Regulation stipulates that the container and packaging of cosmetic products should bear in indelible, easily legible and visible lettering information as to the function of the cosmetic product, unless it is clear from its presentation. In accordance with Article 19(5) of the Regulation, that information is to be provided in the language determined by the law of the Member States in which the product is made available to the end user.

13. It follows from Article 19(1)(f) of the Regulation that a cosmetic product need not bear information on its function provided that such information is clear from its presentation. However, the Regulation does not specify precisely what functions are meant and how detailed their description should be.

14. In the case of most cosmetics, the consumer is able to determine their function, that is, cleaning (for instance, soap and toothpaste), protection (cream) or beautification (for instance, make-up powders and nail varnish). Marketing practice also shows that for many products imported from outside Europe, there are no indications of the function of the product in the local language, but consumers are generally able to determine their functions. Sometimes these descriptions of functions in the local language are placed on a sticker on the product packaging. On the other hand, these are rarely affixed to the container itself, in particular when the container is inside machine-wrapped packaging, since this would require tampering with the cardboard packaging.

15. By its question, the referring court seeks to establish the scope of the exemption from the obligation to state the function of cosmetics on the packaging and on the container. The issue is whether this exemption extends to a situation where the basic function of the cosmetic product in question, that is, its cleaning, protective and beautifying function within the meaning of Article 2(a) of the Regulation can be determined on the basis of its presentation, or whether the cosmetic's properties such as its application, intended use and target group of users should be described in more detail.

16. The referring court also wishes to know whether information on functions should be stated on the container in the consumer's language, since this issue mainly concerns imported products which are distributed in sealed or wrapped cardboard packaging. In this context, it should be pointed out that these cosmetics are also sealed for hygiene reasons.

17. The second question concerns the presentation of information on cosmetic products concerning the specific precautions to be observed in their application, the list of their ingredients and the description of the detailed functions of the cosmetic product in question.

18. As a general rule, precautions should be indicated on containers and packaging. Ingredients may be stated on the packaging alone. However, functions may be indicated on containers and packaging, unless they are clear from the presentation.

19. However, Article 19(2) of the Regulation stipulates that where it is impossible for practical reasons to label the information mentioned in points (d) and (g) of paragraph 1 as provided, the information shall be mentioned on an enclosed or attached leaflet, label, tape, tag or card. Unless impracticable, this information shall be referred to by abbreviated information or the symbol given in point 1 of Annex VII. This symbol is a hand pointing to a book.

20. The question is therefore whether, for practical reasons, it is possible to use a company's catalogue with the information referred to in paragraph 1(d), (g) and (f) instead of an attached leaflet, tag or label. The catalogue in question also describes other products and is not, in fact, a leaflet. For practical reasons, the catalogue provides clear and comprehensive information about the product. However, the referring court recognises the concern that the catalogue may not always be available with the cosmetics.

21. The referring court points out that in the case of small products, it is in practice not possible to include comprehensive information on the container and sometimes even on the packaging.

WORKING DOCUMENT