

Case C-283/01

Shield Mark BV

v

Joost Kist h.o.d.n. Memex

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

(Trade marks — Approximation of laws — Directive 89/104/EEC —
Article 2 — Signs of which a trade mark may consist — Signs capable of being
represented graphically — Sound signs — Musical notation —
Written description — Onomatopoeia)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 3 April
2003 I-14315

Judgment of the Court (Sixth Chamber), 27 November 2003 I-14329

Summary of the Judgment

1. *Approximation of laws — Trade marks — Directive 89/104 — Signs of which a trade mark may consist — Sound signs — Obligation to regard them as capable of being a trade mark — Conditions*
(Council Directive 89/104, Art. 2)

2. *Approximation of laws — Trade marks — Directive 89/104 — Signs of which a trade mark may consist — Signs not capable of being perceived visually — Inclusion — Condition — Signs capable of being represented graphically — Sound signs*

(Council Directive 89/104, Art. 2)

1. Article 2 of First Directive 89/104 to approximate the laws of the Member States relating to trade marks is to be interpreted as meaning that sound signs must be capable of being regarded as trade marks provided that they are capable of distinguishing the goods or services of one undertaking from those of other undertakings and are capable of being represented graphically.

(see para. 41, operative part 1)

2. Article 2 of First Directive 89/104 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that a trade mark may consist of a sign which is not in itself capable of being perceived visually, provided that it can be represented graphically, particularly by means of images, lines or characters, and that its representation is clear,

precise, self-contained, easily accessible, intelligible, durable and objective.

In the case of a sound sign, those requirements are not satisfied when the sign is represented graphically by means of a description using the written language, such as an indication that the sign consists of the notes going to make up a musical work, or the indication that it is the cry of an animal, or by means of a simple onomatopoeia, without more, or by means of a sequence of musical notes, without more. On the other hand, those requirements are satisfied where the sign is represented by a staff divided into measures and showing, in particular, a clef, musical notes and rests whose form indicates the relative value and, where necessary, accidentals.

(see para. 64, operative part 2)