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Judgment of the Court of Justice in Cases C-262/02 and C-429/02

*Commission of the European Communities v French Republic, Bacardi France SAS v
Télévision Française 1 SA (TF1), Groupe Jean-Claude Darmon SA, Girosport Sarl*

THE FRENCH BAN ON INDIRECT TELEVISION ADVERTISING FOR ALCOHOLIC BEVERAGES IS COMPATIBLE WITH COMMUNITY LAW

*Such a ban constitutes a restriction on the freedom to provide services, but is justified by the
aim of protecting public health.*

The French law on the campaign against smoking and alcoholism (the Loi Evin) bans direct or indirect television advertising for alcoholic beverages in France. A breach of those provisions is treated as a 'délit' (misdemeanour) by French criminal law. A Code of Conduct, drawn up by the French authorities and the French television companies, sets out the detailed rules for the application of that ban to retransmission in France of sporting events taking place in other Member States. The Code of Conduct distinguishes between multinational sporting events, pictures of which are retransmitted in a large number of countries and which are, therefore, not regarded as mainly concerning the French public, and bi-national sporting events, whose retransmission is specifically aimed at a French audience. The Code provides that, as regards the latter events, French broadcasters must use all available means to prevent the appearance on their channels of advertising for alcoholic beverages.

Two cases relating to the French rules were referred to the Court of Justice.

In the infringement action (Case C-262/02), the European Commission asks the Court to declare that the French rules are incompatible with the freedom to provide services guaranteed by the EC Treaty, on the ground that the Loi Evin creates obstacles to the retransmission in France of foreign sporting events.

The reference for a preliminary ruling (Case C-429/02) is based on the fact that Télévision Française TF1 requested Groupe Jean-Claude Darmon and Girosport, commissioned to negotiate on its behalf for television retransmission rights for football matches, to prevent the

appearance on screen of brand names of alcoholic beverages. As a result, a number of foreign football clubs refused to rent to Bacardi France, which produces and markets a number of alcoholic beverages, advertising hoardings around their playing fields. Bacardi France therefore sued TF1, Darmon and Giro Sport before the French courts, seeking an order that they cease to exert pressure on foreign football clubs to refuse to rent advertising hoardings around their playing fields. In that context the French Cour de Cassation wished to know whether the French rules were contrary to the provisions of Community law, in particular the freedom to provide services laid down by the EC Treaty and the Community directive 'Television Without Frontiers'.¹

The Court observes first that indirect television advertising for alcoholic beverages resulting from hoardings visible during the retransmission of sporting events does not constitute a separate announcement broadcast to promote goods or services within the meaning of the 'Television without Frontiers' directive. It is impossible to transmit that advertising only during the intervals between the different parts of the television programme concerned. Accordingly, the 'Television without Frontiers' directive is not applicable.

Next, the Court finds that the French television advertising rules constitute a restriction on the freedom to provide services for the purposes of the EC Treaty:

First, because the owners of the advertising hoardings must refuse, as a preventive measure, any advertising for alcoholic beverages if the sporting event is likely to be retransmitted in France, and, second, because the rules hinder the provision of broadcasting services for television programmes. French broadcasters must refuse to retransmit all sporting events in the course of which hoardings bearing advertising for alcoholic beverages marketed in France are visible. Furthermore, the organisers of sporting events taking place outside France cannot sell the retransmission rights to French broadcasters where the broadcast of television programmes devoted to such events is likely to contain indirect television advertising for alcoholic beverages.

Moreover, although it is true that it is technically possible to mask the images in order selectively to conceal the hoardings displaying advertising for alcoholic beverages, the use of such techniques involves substantial extra costs for the French broadcasters.

Finally, the Court considers whether the prohibition may be justified.

The Court states that the French television advertising rules seek to protect public health and that they are appropriate to ensure that that objective is achieved. The rules restrict the situations in which advertising hoardings for alcoholic beverages can be seen on television and, as a result, are likely to restrict the broadcasting of such advertisements, thereby reducing the occasions on which television viewers might be encouraged to consume alcoholic beverages.

The Court, therefore, holds that the principle of the freedom to provide services laid down in the EC Treaty does not preclude a ban such as that imposed by the French rules on indirect television advertising for alcoholic beverages.

¹ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation of administrative action in Member States concerning the pursuit of television broadcasting activities OJ L 1989 298, p. 23.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: German, English, Spanish, French, Italian, Greek.

*The full text of the judgment can be found on the Court's internet site
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

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