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Press and Information

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Judgment of the Court of Justice in Case C-48/05

Adam Opel AG v Autec AG

THE AFFIXING BY A THIRD PARTY OF THE OPEL LOGO ON SCALE MODELS OF OPEL VEHICLES DOES NOT NECESSARILY CONSTITUTE A PROHIBITED USE

The unauthorised affixing of a vehicle trade mark which is also registered for toys may be prohibited, in particular, if it is liable to affect the functions of that trade mark as a trade mark registered for toys

The Landgericht Nürnberg-Fürth (Germany) asks the Court of Justice of the European Communities to interpret certain provisions of the First Directive to approximate the laws of the Member States relating to trade marks¹. In the present case, Adam Opel, a motor manufacturer, is the proprietor of the ‘Opel logo’ registered in Germany on 10 April 1990 for, inter alia, motor vehicles and toys. At the beginning of 2004, Adam Opel discovered that Autec had manufactured and marketed, in Germany, and without its consent, a remote-controlled scale model of the Opel Astra V8 coupé, bearing the Opel logo on its radiator grille like the original vehicle.

Adam Opel considers that the use of the Opel logo on those Autec scale models constitutes an infringement of its trade mark registered for toys. Therefore, it sought an order, inter alia, that Autec should cease using the Opel logo in the course of trade.

The Court points out that a registered trade mark confers on its proprietor the exclusive right to prevent all third parties, acting without his consent, from using in the course of trade a sign which is identical to the trade mark in relation to goods which are identical to those for which the trade mark is registered. That right is granted in order to enable the trade mark proprietor to protect his specific interests, that is, to ensure that the trade mark can fulfil its functions, in particular to guarantee to consumers the origin of the goods.

Therefore, the use by Autec of the Opel logo which is identical to the trade mark registered for toys can be prohibited only if it affects or is liable to affect the functions of the trade mark. It is for the referring court to determine, by reference to the average consumer of toys in Germany, whether those conditions are met.

¹ First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

As regards the consequences to be drawn from the fact that, first, the Opel logo is also registered for motor vehicles and, second, the mark appears to have a reputation in Germany for that kind of product, the Court points out that the trade mark proprietor is entitled to prevent use which, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark as a trade mark registered for motor vehicles.

Finally, the Court answers in the negative the question whether the affixing of a sign identical to a trade mark onto scale models of vehicles of that mark constitutes an indication as to a characteristic of the scale models which the trade mark proprietor cannot prevent. Since the use at issue is merely an element in the faithful reproduction and marketing of the scale models, it is not intended to provide an indication as to a characteristic of those models.

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Languages available: BG, ES, CS, DE, EL, EN, FR, IT, HU, NL, PL, PT, SK

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-48/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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