

Case T-279/03

Galileo International Technology LLC and Others

v

Commission of the European Communities

(Action for damages — Non-contractual liability of the Community — Community satellite global radio navigation system project (Galileo) — Damage pleaded by the proprietors of trade marks and trade names containing the word ‘Galileo’ — Liability of the Community in the absence of unlawful conduct by its institutions — Unusual and special damage)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 10 May 2006 II - 1296

Summary of the Judgment

1. *Procedure — Application initiating proceedings — Formal requirements*
(*Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the Court of First Instance, Art. 44(1)*)

2. *Actions for damages — Jurisdiction of the Community judicature*
(Arts 235 EC and 288, second para., EC)
3. *Community trade mark — Approximation of laws — Trade marks — Interpretation of Regulation No 40/94 and Directive 89/104 — Right of the proprietor of a trade mark to oppose the unlawful use of his mark — Sign which is identical or similar to the trade mark*
(Council Regulation No 40/94, Art. 9(1)(b); Council Directive 89/104, Art. 5(1)(b))
4. *Non-contractual liability — Use, by a Community institution, of a sign to designate a project*
(Art. 288, second para., EC)
5. *Non-contractual liability — Conditions*
(Art. 288, second para., EC; Council Regulation No 40/94, Art. 9(1)(b); Council Directive 89/104, Art. 5(1)(b))

1. Under the first paragraph of Article 21 and the first paragraph of Article 53 of the Statute of the Court of Justice, as well as Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, all applications must contain a statement of the subject-matter of the proceedings and a summary of the pleas relied on. Those details must be sufficiently clear to enable the defendant to prepare its defence and the Court to rule on the application.

cannot be held to be inadmissible on the grounds that the applicant has failed to supply details of the national legislation allegedly contravened. A reference to Article 5(1)(b) of that directive must be regarded as sufficiently clear and precise, since that provision harmonises rules relating to the rights conferred by a trade mark, defines the exclusive rights of trade mark proprietors in the Community and has indisputably been transposed into national law in the Member States in which the trade marks relied upon are registered.

In the case of an application seeking compensation for damage allegedly caused by a Community institution, complaints alleging failure to comply with the rights attaching to national trade marks registered in the Member States of the Community, as defined in Article 5(1)(b) of Directive 89/104,

By contrast, since Article 5(2) and (5) of Directive 89/104 is limited to allowing Member States to provide for greater

protection of trade marks of repute, a complaint alleging infringement of that provision must be held to be inadmissible where the particular reputation of the trade marks concerned and the methods of protection conferred by any of the related national legislation have not been made clear in the application.

with those principles, compensation in kind, if necessary in the form of an injunction to do or not to do something.

Furthermore, as regards trade marks registered in non-member countries, reference to Directive 89/104 is unlikely to remedy the lack of precision as to the nature and scope of the trade mark rights said to have been conferred by the non-Community laws in question.

The uniform protection conferred on the proprietor of a national trade mark registered in a Member State, in accordance with Article 5(1) of Directive 89/104 on trade marks, under which the proprietor of such a mark is entitled 'to prevent all third parties' from using it, falls within the general principles common to the laws of the Member States, as referred to in the second paragraph of Article 288 EC. The aim of Directive 89/104 is for registered national trade marks to have the same protection in all the Member States and Article 5(1) thereof harmonises the rules within the Community relating to the rights conferred by a trade mark. Moreover, Article 98(1) of Regulation No 40/94 on the Community trade mark — which, in accordance with the second paragraph of Article 249 EC, is binding in all its aspects and directly applicable in the Member States — provides, that where Community trade mark courts find that the defendant has infringed or threatened to infringe a Community trade mark they are to issue an order 'prohibiting the defendant from proceeding with the acts which infringed [the trade mark]' and take such measures as are aimed at ensuring that the prohibition is complied with.

(see paras 36, 40-42, 44, 45)

2. It follows from the second paragraph of Article 288 EC and from Article 235 EC that the Community Courts have the power to impose on the Community any form of reparation that accords with the general principles of non-contractual liability common to the laws of the Member States, including, if it accords

Although the uniform protection of proprietors of trade marks has been implemented in the Member States by the procedural measure whereby competent national courts are able to deliver judgments prohibiting the defendant from infringing the trade mark right claimed, the Community cannot, on principle, be excluded from a corresponding procedural measure on the part of the Community Courts, as they have exclusive jurisdiction to hear actions seeking compensation for damage attributable to the Community.

munity project, such use can infringe those provisions only if it is shown that it was intended to designate products or services similar or identical to the products and services covered by the trade marks relied on and takes place in the context of commercial activity with a view to economic advantage.

(see paras 105, 106, 111, 114)

(see paras 63-67)

3. Article 5(1)(b) of Directive 89/104 and Article 9(1)(b) of Regulation No 40/94 make the protection of the proprietor of the mark dependent, first, on there being a likelihood of confusion as a result, inter alia, of the identity or similarity of the products or services covered by the mark and the sign in question and, secondly, on the use of the sign in question by a third party being capable of being described as 'us[e] in the course of trade'.

4. Only acts or conduct attributable to an institution or to a Community body can give rise to the non-contractual liability of the Community. The alleged damage must be a sufficiently direct consequence of the conduct complained of; that is to say, the conduct must be the determining cause of the damage. By contrast, it is not for the Community to make good every harmful consequence, even a remote one, of the conduct of its institutions.

As regards the use of a sign, selected by an institution to designate a Community project, by private undertakings interested in that project in connection with their economic activities, the Community cannot incur liability where that use is based on a choice which those undertakings have made independently. Since the undertakings are deemed to know

Accordingly, where a Community institution uses a sign to designate a Com-

Community law and trade mark law, it seems appropriate to take the view that they must be regarded as responsible, under the relevant legal provisions, for their own conduct on the market. It follows that such a choice must be regarded as the direct and determining cause of the alleged damage, since the Commission's possible contribution to that damage is too remote for the relevant undertakings' liability to fall back on to the Commission.

(see paras 129, 130, 132, 134, 135)

5. In the event of damage caused by the Community institutions' conduct, the unlawfulness of which has not been demonstrated, the Community may incur non-contractual liability as soon as the conditions relating to the reality of the damage, the causal link between it and the conduct on the part of the Community institutions, and the un-

usual and special nature of that damage are all fulfilled. As regards the damage which may be suffered by economic operators on account of the Community institutions, it is unusual where it exceeds the limits of the economic risks inherent in operating in the sector concerned.

The damage caused by the use, by a Community institution, of a word to designate a project cannot be regarded as exceeding the limits of the risks inherent in the use of the same term as a trade mark since, in view of the characteristics of the word chosen, the proprietor of the mark has voluntarily exposed himself to the risk that someone else could legally — that is to say, without infringing his trade mark rights — give the same name to such a project.

(see paras 147-150)