

Case C-317/91

Deutsche Renault AG

v

AUDI AG

(Reference for a preliminary ruling
from the Bundesgerichtshof)

(Free movement of goods — Trade-mark law)

Report for the Hearing	I - 6228
Opinion of Advocate General Tesouro delivered on 9 June 1993	I - 6249
Judgment of the Court, 30 November 1993	I - 6260

Summary of the Judgment

Free movement of goods — Industrial and commercial property — Trade-mark right — Right of the proprietor of a mark consisting in a word in general use in the language of several Member States to oppose the use, for goods imported from another Member State, of a designation leading to confusion — Permissibility — Conditions

(EEC Treaty, Arts 30 and 36)

It does not represent an unlawful restriction on intra-Community trade for the purposes of Articles 30 and 36 of the EEC Treaty if a subsidiary trading in Member State A of an automobile manufacturer established in Member State B is prohibited from using as a mark in Member State A the designation 'Quadra', which the manufacturer has hitherto used without restriction for a four-

wheel-drive motor vehicle, both in its own State and elsewhere, on the ground that another automobile manufacturer in Member State A claims — validly under the internal law of Member State A — a trade-mark right ('Warenzeichenrecht') and/or a right to a get-up ('Ausstattungsrecht') in the word 'Quattro', with which the designation 'Quadra' would create a risk of confusion, even though the word 'Quattro' denotes a numeral in another Member State and that

meaning is clearly discernible in other Member States, and even though the number 4 thereby designated plays a significant and varied role in automobile manufacturing and the automobile trade.

In the absence of unification or approximation of laws within the Community, the lay-

ing down of conditions for the protection of a designation such as 'Quattro' and the establishment of criteria making it possible to determine the existence of a risk of confusion between two designations — as to which Community law does not require a strict interpretation — are a matter for national law, subject to the limits laid down by the second sentence of Article 36 of the Treaty.

REPORT FOR THE HEARING In Case C-317/91 *

I — Facts and procedure

'Paragraph 4 (Prohibited marks)

1. *Legal background to the dispute*

(1) Freely available marks (*Freizeichen*, e. g. generic names) shall not be registered in the trade-mark register.

(a) *National law*

The relevant provisions of the German trade-mark Law, the *Warenzeichengesetz* (hereinafter referred to as 'the WZG') in the version published on 2 January 1968 (*Bundesgesetzblatt I*, p. 29), as most recently amended by the Law of 7 March 1990 (*Bundesgesetzblatt I*, p. 422), are as follows:

(2) In addition the following marks shall not be registered:

(i) those which are devoid of any distinctive character or contain exclusively numerals, letters or words designating the kind, time

* Language of the case: German.