

Case T-223/01

Japan Tobacco Inc. and JT International SA

v

European Parliament and Council of the European Union

(Action for annulment — Article 7 of Directive 2001/37/EC —  
Admissibility — *Locus standi* — Direct concern)

Order of the Court of First Instance (Fifth Chamber), 10 September 2002 II-3262

Summary of the Order

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Legislative measure — Directive (Art. 230, fourth para., EC)*

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly affected — Criteria — Provision of a directive prohibiting the use of certain descriptions on the packaging of tobacco products — Companies manufacturing and marketing cigarettes under a trade mark — Whether directly affected — Not so affected*

(Art. 230, fourth para., EC; European Parliament and Council Directive 2001/37, Art. 7)

1. Although the fourth paragraph of Article 230 EC of the Treaty makes no express provision regarding the admissibility of actions brought by private persons for annulment of a directive, that fact in itself is not sufficient to render such actions inadmissible. The Community institutions cannot, merely by means of their choice of legal instrument, deprive individuals of the judicial protection which is afforded them by that provision of the Treaty. Moreover, in certain circumstances even a legislative measure which applies to economic operators generally may be of direct and individual concern to some of them.

flowing solely from the Community legislation without the application of other intermediate rules. This means that, where a Community measure is addressed to a Member State by an institution, if the action to be taken by the Member State in response to the measure is automatic or is, at all events, a foregone conclusion, then the measure is of direct concern to any person affected by that action. If, on the other hand, the measure leaves it to the Member State whether or not to act, it is the action or inaction of the Member State that is of direct concern to the person affected, not the measure itself. In other words, the measure in question must not depend for its effect on the exercise of a discretionary power by a third party, unless it is obvious that any such power is bound to be exercised in a particular way.

(see paras 28-29)

2. For an individual to be directly affected, within the meaning of the fourth paragraph of Article 230 EC, the Community measure challenged must directly produce effects on his legal position and leave no discretion to the addressees of that measure who are entrusted with its implementation, that being a purely automatic matter

In that respect, Article 7 of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products, which prohibits the use of certain descriptions

on the packaging of such products, does not bring about any change in the legal position of two companies manufacturing and marketing cigarettes under a trade mark until such time as that article is transposed into the national law of at least one Member State, or until the expiry of the period prescribed for its transposition, such companies remaining the owners and

licensees of the trade mark and continuing to be entitled to use it in order to market cigarettes in the Community.

(see paras 45-47)