

Case 238/87

AB Volvo

v

Erik Veng (UK) Ltd

(reference for a preliminary ruling
from the High Court of Justice of England and Wales,
Chancery Division, Patents Court)

(Abuse of a dominant position — Refusal by the proprietor
of a registered design to grant a licence)

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Opinion of Mr Advocate General Mischo delivered on 21 June 1988	6224
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Summary of the Judgment

- Free movement of goods — Industrial and commercial property — Designs and models — Protection — Conditions and procedures — Determination thereof by national law — Protection of components forming part of a unit already protected as such — Whether permissible*
(EEC Treaty, Art. 36)
 - Competition — Dominant position — Designs and models — Car body panels — Exercise of the right — Abuse — Conditions*
(EEC Treaty, Art. 86)
1. In the absence of Community standardization or harmonization of laws, the determination of the conditions and procedures under which the protection of designs and models is granted is a matter for the national rules of each Member State. It is for the national legislature to determine which products may benefit

from protection, even where they form part of a unit which is already protected as such.

2. The right of a proprietor of a protected design to prevent third parties from manufacturing and selling or importing, without his consent, products incorporating the design constitutes the very subject-matter of his exclusive right. It follows that an obligation imposed upon the proprietor of a protected design to grant to third parties, even in return for a reasonable royalty, a licence for the supply of products incorporating the design would lead to the proprietor thereof being deprived of the substance of his exclusive right, and that a refusal

to grant such a licence cannot in itself constitute an abuse of a dominant position.

However, the exercise of such an exclusive right by the proprietor of a registered design in respect of car body panels may be prohibited by Article 86 if it involves, on the part of an undertaking holding a dominant position, certain abusive conduct such as the arbitrary refusal to supply spare parts to independent repairers, the fixing of prices for spare parts at an unfair level or a decision no longer to produce spare parts for a particular model even though many cars of that model are still in circulation, provided that such conduct is liable to affect trade between Member States.

REPORT FOR THE HEARING

delivered in Case 238/87*

I — Facts and legal background

(a) *The dispute in the main proceedings*

AB Volvo (hereinafter referred to as 'Volvo'), which is a company incorporated under the laws of Sweden, is the controlling company of the Volvo group, which includes *inter alia* companies specializing in

the manufacture and production of cars, trucks, buses, marine and industrial engines and aerospace engines. In most Community countries, Volvo cars are sold by Volvo companies, except for the United Kingdom, Greece and Spain where they are imported and sold by wholly independent companies.

Erik Veng (UK) Ltd (hereinafter referred to as 'Veng') is a legally independent United Kingdom company. Formerly it was a 50% subsidiary of Veng A/S Denmark which, like other undertakings established in Italy

* Language of the Case: English.