

Case C-173/98

Sebago Inc. and Ancienne Maison Dubois et Fils SA

v

G-B Unic SA

(Reference for a preliminary ruling
from the Cour d'Appel de Bruxelles)

(Trade mark — Exhaustion of a trade-mark proprietor's rights — Proprietor's
consent)

Opinion of Advocate General Jacobs delivered on 25 March 1999 I-4105
Judgment of the Court (Fifth Chamber), 1 July 1999 I-4114

Summary of the Judgment

1. *Approximation of laws — Trade marks — Directive 89/104 — Exhaustion of the right conferred by a trade mark — Conditions — Product placed on the market in the Community or the European Economic Area — National legislation providing for the exhaustion of rights in respect of products placed on the market in non-member countries — Not permissible*
(Council Directive 89/104, Art. 7(1))

2. *Approximation of laws — Trade marks — Directive 89/104 — Product placed on the market in the Community or in the European Economic Area with the consent of the trade-mark proprietor — Exhaustion of the right conferred by the trade mark — Scope — Limited to individual items of the approved product that have been put on the market with the consent of the proprietor*
(Council Directive 89/104, Art. 7(1) and (2))

1. Article 7(1) of the First Council Directive 89/104 on trade marks, as amended by the Agreement on the European Economic Area (EEA), must be interpreted as meaning that rights conferred by a mark are exhausted only if the products have been put on the market in the Community (in the EEA since the EEA Agreement entered into force) and that the Directive does not leave it open to the Member States to provide in their domestic law for exhaustion of the rights conferred by a trade mark in respect of products put on the market in non-member countries.
2. The purpose of Article 7(1) of the First Council Directive 89/104 on trade marks, as amended by the Agreement on the European Economic Area (EEA), is to make possible the further marketing of an individual item of a product bearing a trade mark that has been put on the market in the Community (in the EEA since the EEA Agreement entered into force) with the consent of the trade-mark proprietor and to prevent him from opposing such marketing. The rights conferred by a trade mark are exhausted only in respect of the individual items of the product which have been put on the market with the proprietor's consent. With respect to the other individual items of that product, put on the market without his consent, the proprietor may continue to prohibit the use of the mark in pursuance of the right conferred on him by the Directive. Accordingly, Article 7(1) of the Directive must be interpreted as meaning that, for there to be consent within the meaning of that provision, such consent must relate to each individual item of the product in respect of which exhaustion is pleaded.