

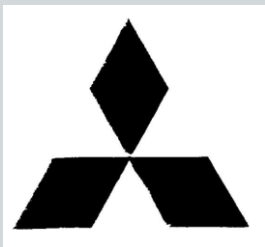
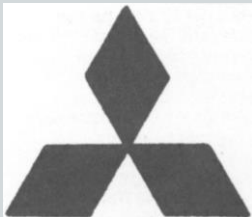
Bird & Bird & Reports of Trade Mark Cases for CIPA Journal

April 2019



Trade mark decisions

Decisions of the General Court (GC) and Court of Justice (CJ)

Ref no.	Application (and where applicable, earlier mark)	Comment
<p>CJ</p> <p>C-129/17</p> <p><i>Mitsubishi Shoji Kaisha Ltd, Mitsubishi Caterpillar Forklift Europe BV v Duma Forklifts NV, G.S. International BVBA</i></p> <p>25 July 2018</p> <p>Reg 207/2009</p> <p>Directive 2008/95/EC</p> <p>Reported by: <i>Daniel Anti</i></p>	 <p>- motor vehicles, electric vehicles and forklift trucks (12)</p> <p>MITSUBISHI</p> <p>- motor vehicles, electric vehicles and forklift trucks (12)</p> <p>(EUTMs)</p>  <p>- land vehicles and means of transport (12)</p> <p>MITSUBISHI</p> <p>- land vehicles and means of transport (12)</p> <p>(Benelux marks)</p>	<p>On a reference from the Brussels Court of Appeal, the CJ held that removing a proprietor's marks from its goods and affixing other signs to those goods and subsequently importing them into the EEA constituted infringement under Art 9 of the Regulation and Art 5 of the Directive.</p> <p>Duma was in the business of purchasing Mitsubishi forklifts from outside the EEA. Following purchase, Duma would remove the Mitsubishi marks, rebrand the trucks and make alterations to them such that they were compliant with various EU regulations. Duma then imported the rebranded altered trucks into the EEA.</p> <p>The CJ noted that removal of the marks deprived Mitsubishi of its essential right to control initial marketing in the EEA of goods bearing its mark. Prohibiting it from doing so was contrary to the objective of ensuring undistorted competition in the EEA.</p> <p>Furthermore, despite the removal of the marks, the relevant consumers continued to recognise the forklift trucks as Mitsubishi's (although the essential function of the mark could be harmed irrespective of the fact). Removal of the marks therefore precluded Mitsubishi from being able to retain customers by virtue of the quality of the goods.</p> <p>Finally, the CJ noted that removal of the marks in order to fix other signs would be considered 'use in the course of trade', as it involved active commercial conduct for economic advantage; this was particularly the case where the intention was to market the goods in the EEA.</p>
<p>GC</p> <p>T-122/17</p> <p><i>Devin AD v EUIPO; Haskovo Chamber of</i></p>	<p>DEVIN</p> <p>- non-alcoholic drinks; mineral water; seltzer waters; fruit-flavoured beverages; juices; syrups; non-alcoholic aperifs; spring water; flavoured water; non-alcoholic fruit</p>	<p>The GC annulled the BoA's decision that the mark DEVIN was descriptive of the geographical origin of the goods covered by the mark under Art 7(1)(c). Devin is the name of a spa town in southern Bulgaria that possesses a number of hot</p>

Commerce and Industry

extracts; non-alcoholic fruit juices beverages; table water; water (beverages) (32)

springs, spa resorts and water reserves.

The GC held that, when the BoA assessed the alleged descriptive character of the mark, it had incorrectly focused its assessment on tourists from neighbouring Greece and Romania who had visited Bulgaria or Devin. Instead it should have taken into consideration the entire relevant public in the EU.

25 October 2018


Reg 207/2009

Reported by:


Mark Livsey

Tourists that had visited Bulgaria or Devin were more likely to be aware of Devin and its reputation than the average consumer of beverages in the EU as a whole. The BoA's focus on these tourists led to the incorrect factual assessment that the relevant public would associate the mark DEVIN with the geographical origin of the goods concerned. The entire relevant public in the EU would not associate the mark with Devin in this way.

Ref no.	Application (and where applicable, earlier mark)	Comment
GC T-546/17 <i>Haufe-Lexware GmbH & Co. Kg v EUIPO; Le Shi Holdings (Beijing) Ltd</i>	LESHARE <ul style="list-style-type: none">- computer software; electronic publications; computer programs (9)- rental of advertising space; on-line advertising on a computer network; production of advertising films; advertising and marketing services; systemisation of information into computer databases (35)	<p>The GC upheld the BoA's decision that there was no likelihood of confusion between the marks under Art 8(1)(b).</p> <p>The BoA was correct to find that the relevant public was the English speaking general public and IT professionals and that the level of attention of the relevant public varied from average to high.</p> <p>As regards the visual and phonetic comparison of the signs at issue, the average consumer would perceive the mark applied for as consisting of distinct 'le' and 'share' elements and the earlier mark as consisting of distinct 'lex' and 'ware' elements. This separation lessened the effect of the coincidence between the first and the last letters of the signs at issue and the BoA was therefore correct to find that the marks had an average degree of visual and phonetic similarity.</p> <p>As regards the conceptual comparison, as the term 'ware' was commonly used in relation to information technology goods and services, the mark LEXWARE would be perceived by the relevant public as being descriptive of the same. On the other hand, the term LESHARE did not have any specific meaning. As such, the marks were conceptually dissimilar.</p> <p>The GC agreed with the BoA that the conceptual dissimilarity outweighed the average degree of visual and phonetic similarity and that there was therefore no likelihood of confusion between the marks at issue.</p>
15 November 2018 Reg 207/2009	LEXWARE <ul style="list-style-type: none">- electronic publications; software, database software; data storage media; hardware; computer networks (9)- advertising; rental of advertising space on the Internet; IT and EDP outsourcing services, data collection; collection and maintenance of data in databases (35)	
Reported by: <i>Mark Livsey</i>		

Ref no.	Application (and where applicable, earlier mark)	Comment
GC T-263/18 <i>Meblo Trade d.o.o, v EUIPO; Meblo Int</i>	 <ul style="list-style-type: none"> - Furniture, including beds and bed frames; spring mattresses; (20) - Services relating to the sale of furniture, beds, bed frames, spring mattresses and other articles of sleeping equipment (35) 	<p>The GC upheld the BoA's decision; the application for revocation under Art 58(1)(a) was dismissed.</p> <p>Although the intervener had only used variants of the mark in issue, such variations in the use of the mark did not alter its distinctive character. The use of those variants of the mark was sufficient to establish genuine use.</p> <p>The GC further held that the use of descriptive elements with the mark, such as the type of goods and services, the date of establishment or the method of distribution did not alter the distinctive character of the mark.</p>

Ref no.	Application (and where applicable, earlier mark)	Comment
GC T-220/16 <i>Perry Ellis International Group Holdings Ltd v EUIPO</i>	<p>PRO PLAYER</p> <ul style="list-style-type: none"> - clothing, footwear and headgear (25) 	<p>The GC upheld the BoA's refusal to register the mark applied for on the grounds of descriptiveness pursuant to Art 7(1)(c).</p> <p>The GC noted that it was sufficient that the sign was descriptive in relation to only some of the goods within a category of goods. The goods applied for included goods relating to sport.</p> <p>Accordingly, the BoA was correct to conclude that the mark applied for would be perceived by the relevant public as indicating that the goods designated by the sign were either identical or similar to those used or worn by professional players of a sport or game.</p> <p>As the GC held that the BoA was correct in its conclusion on descriptiveness, there was no need for the GC to further consider whether the mark was devoid of distinctive character pursuant to Art 7(1)(b).</p>

Ref no.	Application (and where applicable, earlier mark)	Comment
GC T-777/17 <i>Xianhao Pan v EUIPO; Entertainment One UK Ltd; Astley Baker Davies Ltd</i>	 <ul style="list-style-type: none"> - clothing, footwear, headgear (25) 	<p>The GC held that the later registered mark was invalid pursuant to Art 53(1)(a) read in conjunction with Art 8(1)(b).</p> <p>The GC found that the marks were visually similar. They both represented an illustration of an anthropomorphic pig. The shape of the head, facial features and snout were almost identical. The differences identified did not outweigh the similarities.</p> <p>The GC also held that there was a</p>



- clothing, footwear, headgear (25)

phonetic similarity between the word elements TOBBIA and PEPPA. Both words ended with the letter 'a', and were disyllabic words containing the repetition of strong consonants.

Conceptually, the GC held the marks were similar to an average degree since the public would associate the signs with a pig.

As the marks were similar, the goods were identical, and the visual similarity was particularly important for the sale of clothing items, there was a likelihood of confusion between the marks.

Ref no.	Application (and where applicable, earlier mark)	Comment
<p>GC T-107/18 <i>Erkan Aytekin v EUIPO; Dienne Salotti Srl</i></p> <p>27 February 2019 Reg 2017/1001</p> <p>Reported by: <i>Louise O'Hara</i></p>	 <p>- Divan beds; bed chairs; armchairs; bunk beds; divan (20)</p>  <p>- furniture of any material (20, 24 and 25)</p>	<p>The GC upheld the BoA's decision that there was no likelihood of confusion between the marks under Art 8(1)(b).</p> <p>The BoA was correct in finding that the relevant public was the public at large, demonstrating a higher than normal level of attention (since items of furniture are not purchased regularly).</p> <p>The GC also agreed that the marks were visually similar to a very low degree, and somewhat phonetically similar.</p> <p>The GC further agreed with the BoA's conceptual analysis of the marks. The BoA had held that, notwithstanding a semantic link between the marks in Italian, the marks were meaningless to the non-Italian speaking public. As such the conceptual elements did not influence the assessment of similarity of the marks.</p> <p>As the goods covered by the marks were generally chosen visually, the lack of similarity between the visual elements of the marks was ultimately determinative.</p>
<p>GC T-297/18 <i>Wirecard Technologies GmbH v EUIPO; Striatum Ventures BV</i></p> <p>13 March 2019 Reg 2017/1001</p> <p>Reported by: <i>Adeena Wells</i></p>	<p>supr</p> <p>- software (9); - data transmission (38) - computer programming and software design (42)</p> <p>Zupr</p>  <p>- software (9) - administrative services (35) - design and development of computer</p>	<p>In an application for a declaration of invalidity under Art 60(1)(a), the GC upheld the BoA's decision that the later mark was invalid pursuant to Art 8(1)(b).</p> <p>The BoA did not err in finding that the signs were visually similar to an average degree. In making this assessment the GC rejected the applicant's submissions that the difference in the letters at the start of both marks should be given greater attention than that accorded to the other three letters.</p> <p>The GC further dismissed the applicant's claim that the entirety of the relevant public would interpret the word 'supr' as</p>

hardware and software (42)
(Benelux marks)

'super'. The GC stated that for the part of the public who would associate the mark with 'super', the marks were conceptually dissimilar, but for the part of the public who would not make such association, the conceptual comparison was neutral.

Ultimately the GC held that the conceptual dissimilarity would not detract from the visual and aural similarities or from the similarity and identity of goods and services of the respective marks. The BoA was therefore correct to find that the mark was invalid based on the likelihood of confusion.

CJ
C-578/17
Oy Hartwall Ab



27 March 2019
 Directive
 2008/95/EC

Reported by:
Aaron
Hetherington

- mineral waters (32)

Description: 'The colours of the sign are blue (PMS 2748, PMS CYAN) and grey (PMS 877)'

The CJ responded to questions that had been referred by the Finnish Supreme Court regarding the interpretation of Arts 2 and 3(1)(b).

The CJ held that the classification of the sign as a colour mark or as a figurative mark was a relevant factor in determining the scope of protection and subject matter of the mark, and in particular whether the contours of the sign were protected.

It was also held that the classification was relevant in assessing the inherent distinctive character of the mark. Since distinctive character was to be assessed against the 'actual situation', taking account of all relevant circumstances, the classification of the mark was one relevant factor in this global assessment. In particular, the classification impacted the perception of the relevant public, who were not accustomed to perceiving colour marks as indicative of the origin of goods or services.

The CJ held that Art 2 precluded the registration of marks where the sign had been represented as a colour drawing with defined contours, but where the verbal description related to a colour combination without specified contours. Such inconsistencies in the application made it impossible to determine the exact subject matter and scope of protection, such that the application lacked the required clarity and precision, and should therefore have been refused.

Ref no.	Application (and where applicable, earlier mark)	Comment
GC T-138/17 <i>Prim, SA v EUIPO;</i> <i>Primed</i> <i>Halberstadt</i> <i>Medizintechnik</i> <i>GmbH</i>	PRIMED - various goods used for medical purposes (10) - drinking vessels and tableware for invalid and geriatric care (21) - wholesaling of various goods in	In an application for a declaration of invalidity under Art 53(1)(a), the GC annulled the BoA's decision that the applicant had not established genuine use of the earlier national marks. The GC held that BoA had found there was no genuine use of the earlier

20 March 2019

Reg 207/2009

Reported by:

Daniel Anti

Class 10 intended for use by medically trained personnel (35)



- external applications, bandages, threads and fabrics for pharmaceutical and medical use; bandage material; material for tooth filling and dental care (5)
- surgical, medical, dental and veterinary apparatus and instruments (10)

national marks in respect of a period which was never discussed by the parties and on which they therefore had no opportunity to comment nor, consequently, to submit evidence at any stage of the proceedings before EUIPO.

In the particular circumstances of this case, the GC held that the BoA had infringed the applicant's right to be heard by failing to invite the applicant to submit its comments on an item of evidence upon which the BoA had based its decision.

The GC further held that there were no grounds upon which to hold the evidence of genuine use which the applicant allegedly could have submitted, would have been new evidence which the BoA would not have been required to take into consideration.

The GC annulled the BoA's decision in its entirety without there being a need to consider the other pleas in the application.

Bad faith and agent/principal relationships

Mouldpro ApS ("Mouldpro") v EUIPO; Wenz Kunststoff GmbH & Co. KG ("Kunststoff") (GC; Fifth Chamber; T-796/17; 14.02.2019)

The GC upheld the BoA's decision that Mouldpro had not demonstrated sufficient earlier use of the sign "Mouldpro", nor the existence of bad faith on the part of Kunststoff in registering it. Past commercial interactions between Kunststoff and certain Mouldpro group companies were not enough to give rise to any agency or representation relationship with Mouldpro. Francesca Rivers reports.

Background

German company Kunststoff purchased moulding industry products from Danish company HCT Tool A/S ("HCT"), for sale in Germany. Mouldpro, a Danish group company of HCT, subsequently adopted "Mouldpro" as its company name, introduced the trade mark "Mouldpro" for its products in Denmark and began selling MOULDPRO-branded products in Germany. The following year, HCT and Kunststoff began discussions regarding a possible distribution agreement for MOULDPRO products in Germany. Later that year, Kunststoff filed for and was granted a EUTM for MOULDPRO for goods relating to hoses and hose connections in class 17.

Mouldpro contested the validity of the mark, claiming that Kunststoff had applied for the mark in bad faith pursuant to Article 52(1)(b). Mouldpro submitted that Kunststoff applied to register the contested mark solely to keep Mouldpro out of the German market. Mouldpro further contested registration of the mark on relative grounds based on Mouldpro's earlier rights (Article 8(4)/53(1)(c)) and Kunststoff acting as an agent/representative of Mouldpro without consent (Article 8(3)/53(1)(b)).

The CD rejected Mouldpro's application and the BoA dismissed its subsequent appeal. Mouldpro subsequently appealed the BoA's decision to the GC.

Decision

The GC dismissed Mouldpro's application, upholding the BoA's decision in its entirety.

The BoA had correctly determined that Mouldpro had not demonstrated the existence of an agent/principal relationship between itself and Kunststoff. Mouldpro had not demonstrated that an agency/representative relationship existed between Kunststoff and any Mouldpro group company. This was notwithstanding the fact that Kunststoff shared a director with an entity that was itself party to an agency/representative relationship with Mouldpro. In order for Article 8(3) to apply, an agreement of commercial cooperation must have existed giving rise to a fiduciary relationship and duty of loyalty. A mere purchaser-seller relationship would not suffice, nor would negotiations concerning commercial cooperation.

The GC further held that the BoA had not erred in rejecting as inadmissible the Article 8(4)/53(1)(c) claim in so far as Mouldpro had invoked for the first time at the appeal stage an additional earlier right, namely an earlier Danish company name. Nor had it erred in finding that part of Mouldpro's evidence in relation to an earlier unregistered Danish trade mark was inadmissible. The BoA was also correct to find that the admissible evidence was not enough to show that, before the contested mark was filed, Mouldpro had used its earlier mark in the course of trade and the mark had more than local significance.

As regards bad faith, the GC held the BoA had not erred in considering that the arguments and evidence submitted by Mouldpro were inadequate to rebut the presumption of good faith. The BoA correctly found the evidence did not support a conclusion that Kunststoff knew, or must have known, Mouldpro was using the sign "Mouldpro" to market goods similar to those covered by the contested mark. Nor had Mouldpro sufficiently evidenced that Kunststoff had acted with dishonest intention when seeking registration of the mark.

Relevance of Nice Classification in non-use revocation proceedings

***Pathway IP Sarl v Easygroup Ltd** (Carr J; [2018] EWHC 3608 (Ch); 21.12.2018)**

Carr J dismissed Pathway IP's appeal from a decision of the hearing officer in which he revoked Pathway IP's trade marks for EASYOFFICE in their entirety for non-use. Even assuming that the hearing officer erred in law by narrowing the ordinary meaning of the words used in the specifications of Pathway IP's marks by reference to the class in which they were registered, the evidence still failed to prove use during the relevant period. Hilary Atherton reports.

Background

Pathway IP's marks were registered for "*provision of office facilities, rental of office equipment*". The hearing officer interpreted the scope of the services in the specifications by reference to their natural and ordinary meaning. He then adopted a narrower interpretation of the specifications by reference to the Nice Classification lists in Class 35, which was the class in which the marks were registered. In so doing, he relied upon the judgment of the Court of Appeal in *Altecnic Ltd's Trade Mark Application* [2001] EWCA Civ 1928. He stated that as a matter of plain language, "rental of office equipment" was "no more and no less the rental of any equipment that may be used in an office". He noted that, in the Nice Classification, the entry "Rental (Office machines and equipment –)*" in Class 35 included an asterisk, which indicated that the rental of machines and equipment that may be used in an office could also be found in other classes. He also noted that while the rental of photocopiers was listed in Class 35, the rental of fax machines, modems and phones was in Class 39, the rental of computers was in Class 42, and the rental of furniture was in Class 43. He concluded that the specifications of the marks could therefore not cover these services. He added that the rental of printers would also fall into Class 42 as a computer peripheral. The hearing officer also considered the natural and ordinary meaning of "the provision of office facilities" and concluded that, as the marks were registered in Class 35, they could not encompass the service of renting office accommodation, which was listed in Class 36.

The approach taken by the hearing officer was in accordance with practice guidance published by the UKIPO and the EUIPO. However, Pathway IP contended that this approach was wrong in law, in the light of the judgments of Arnold J in *Omega Engineering, Inc v Omega SA* [2010] EWHC 1211 (Ch), *Omega Engineering, Inc v Omega SA* [2012] EWHC 3440 (Ch), and *Fil Ltd v Fidelis Underwriting Ltd* [2018] EWHC 1097 (Pat). Judgments in the latter two cases were handed down subsequent to the decision of the hearing officer.

The appeal

Having refused Pathway IP's application to adduce fresh evidence on the appeal relating to the contents of the prosecution file, Carr J went on to decide the remaining three issues:

(i) Did the hearing officer wrongly construe the scope of registered services by reference to the classes set out in the Nice Classification?

Carr J considered that the hearing officer did not err as a matter of law by narrowing the natural meaning of the specification by reference to Class 35 of the Nice Classification. He considered it unnecessary to reach a concluded view, and thought it inappropriate to give one in light of the judgments of Arnold J and because further submissions would be required as to the interpretation of Article 2 of the Nice Agreement. However, he gave a provisional view in light of counsel's detailed submissions on the issue.

His provisional view, in light of: (i) the *IP Translator* case (Case C-307/10), (ii) the interpretation of Article 2(1) of the Nice Agreement, (iii) EUIPO and UKIPO practice, and (iv) the judgment in *Altecnic* not being confined to the facts of that case, was that it was appropriate to use the class number as an aid to interpretation of the specification where the words used in the specification lacked clarity and precision. He was of the view that this applied to granted registrations as well as to applications and therefore applied in the context of infringement actions and revocation claims.

As regards the natural and ordinary meaning of the words used in the specification, Carr J considered that far from challenging the hearing officer's conclusion, Pathway IP had accepted that it was correct. In his view, it was not open to Pathway IP to advance a contrary case during oral argument. In Carr J's judgment, the phrase "provision of office facilities" was clear and precise. It meant the provision of facilities for use in an office. It was potentially of wide scope and so the hearing officer was correct to consider the core of the ordinary and natural meaning of the words used. The inclusion of the rental of office accommodation would interpret the phrase so liberally that it would be unclear and imprecise. However, the interpretation which the hearing officer set out was clear and precise. Therefore, this was not a case where it was necessary to consider the class number and limit the services (if any) in respect of which the marks had been used during the relevant period to exclude those which fell within the natural and ordinary meaning. Therefore, Carr J assumed in favour of Pathway IP that the hearing officer erred in law in excluding services, other than photocopying, by reference to the class number.

(ii) Exclusion of services which may fall into a number of different classes

Pathway IP's contention that the hearing officer made a further error of law by excluding those services from his consideration which might have fallen into a number of classes got it no further than the assumption that the Judge had already made in its favour based on his provisional view of the law, above. He therefore assumed again in favour of Pathway IP that the hearing officer erred in law in excluding services, other than photocopying, by reference to the class number.

(iii) Evidence of genuine use

Despite the assumptions made in Pathway IP's favour based on his provisional view of the law, Carr J considered that the hearing officer was entitled to find that there was no or insufficient evidence of genuine use in the relevant period. Therefore, the appeal was dismissed.

Exhaustion; selling component parts

***Nomination Di Antonio e Paolo Gensini SNC & Anr v Sebastian Brealey & Anr** (Judge Hacon; [2019] EWHC 599 (IPEC); 13.03.19)**

Nomination had legitimate reason to oppose Sebastian Brealey's (trading as JSC Jewellery ("JSC")) sales of genuine Nomination base links pursuant to Article 7 of the Directive. The packaging sold by JSC was liable to damage the reputation of Nomination's trade marks. JSC was also found to infringe Nomination's trade marks by advertising and selling links which included its own as well as Nomination's links. Passing off was also found. Louise O'Hara reports.

Facts

Nomination was an Italian partnership which dealt in charm bracelets. One of its products was a 'composable bracelet' consisting of a number of individual links which could be detached from each other and rearranged by the wearer. Some of these links, referred to by Nomination as 'base links', were stainless steel links bearing Nomination's mark. Nomination also sold 'base bracelets', which were bracelets composed of 13 or 18 base links.

JSC purchased Nomination base bracelets from retailers in Germany and Italy and disassembled them to separate out the base links. In some instances they also sourced single base links from UK and Italian retailers. Between April 2013 and July 2018, JSC sold single Nomination base links bundled together with a single JSC link. These bundles consisted either of two blister packs, one for each of the Nomination and JSC links, or alternatively the JSC link was supplied in a blister pack and the Nomination base link was in a small plastic bag with a label stating: "Manufactured by Nomination Italy Repackaged by JSC Jewellery UK". The bundles of two links were sold by JSC on ebay.

Nomination alleged that JSC's advertising and sales of the bundled base links infringed its EU marks for NOMINATION (including one stylised mark) registered in Class 14 for, amongst other things, jewellery.

Article 7

It was common ground between the parties that JSC's marketing of the individual Nomination base links constituted a use of the sign in relation to goods identical to those for which the marks were registered.

JSC claimed the marks were exhausted which was denied by Nomination on the basis of an analogy with *Zino Davidoff v A&G Imports* (Cases C-414 to 416/99). The Judge held that the analogy was not exact, but in any event Nomination had not expressed any restriction on sales of individual links at the relevant time. Absent any legitimate reasons for opposing the onward sales of the links under Article 7(2), it was not clear to him why Nomination should have a sound basis for objecting to such sales.

Legitimate reasons under Article 7(2)

Whilst Nomination sold its products in elegant packaging which gave the impression that the goods were of a high quality, JSC sold Nomination-branded base links either in blister packets or in small transparent plastic bags. This was likely to damage the reputation of Nomination's mark. In coming to this conclusion, Judge Hacon considered the case law of the CJEU in the repackaging cases and pointed to the inconsistency between *Parfums Christian Dior v Evora* (Case C-337/95) and *Copad v Christian Dior Couture* (Case C-59/08); the former requiring serious damage to the reputation of the mark, the latter merely requiring damage (the test adopted by the Judge).

Furthermore, Judge Hacon held that, unlike pharmaceutical cases, Nomination should not succeed in their arguments that JSC had not identified who has done the repackaging or that the repackaging risked damaging the condition of the links (*BMS v Paranova* (Cases C-457, 429 and 436/93) conditions (3) and (2) respectively). Pharmaceuticals were sensitive products; there was no such sensitivity attached to the sale of bracelets.

JSC's use of Nomination's signs in relation to its own links

The Judge considered that JSC's advertising and supply of Nomination base links bundled with its own links had led to confusion in the mind of some of the relevant public and, although it could take different forms, amongst a significant proportion, the confusion took the form of a belief that the charms were genuine Nomination charms. He therefore found that JSC's use of the trade marks in its advertising was infringing pursuant to Section 10(1) and amounted to passing off.

The reported cases marked * can be found at <http://www.bailii.org> and the CJ and GC decisions can be found at http://curia.europa.eu/jcms/jcms/j_6/hom

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