

European Court of Justice, 23 November 1989, Parfümeriefabrik 4711



ADVERTISING

Directive on cosmetic products: comprehensive harmonization

- Article 6(2) of the directive precludes national rules from requiring an indication of the quality and quantity of the substances whose presence is indicated on the packaging, in advertisements, or in the names of cosmetic products covered by the directive.

Article 7(1) of the directive provides that Member States may not refuse, prohibit or restrict the marketing of any cosmetic products which comply with the requirements of the directive, subject only to the proviso, in Article 7(2), that they may require that certain of the particulars provided for in Article 6(1) be expressed in their own national or official language or languages. It follows that that list of information is exhaustive, and that a Member State may not require the indication, not expressly provided for in the directive, of particulars as to the quality and quantity of the substances mentioned in the presentation of cosmetic products. Because of the implied obligation to modify the packaging in which the products are legally marketed in certain Member States, such a requirement is likely to hinder trade within the Community. A distributor established in one of those States may even encounter difficulty in exporting cosmetic products to another Member State, if that State requires the indication in question and the producer does not provide the distributor with the requisite information. It must be added that, whilst Article 6(2) of the directive requires Member States to take the measures necessary to ensure that, in the labelling or presentation for sale of cosmetic products, wording, names, trade marks, images or other signs suggesting a characteristic which the products in question do not possess are prohibited, it does not authorize Member States to require information not provided for in the directive on the labelling or packaging of those products. Furthermore, the underlying aim of Article 6(2) of the directive, that of protecting consumers, may be achieved by means less restrictive of Community trade. It appears from a comparison of the national provisions adopted for that purpose that certain Member States have laid down a general prohibition of any indication likely to mislead the consumer. There is nothing to suggest that such a general prohibition is inadequate to achieve the desired end. The answer to the first question must therefore be that Article 6(2) of Council Directive 76/768/EEC precludes national rules from requiring an indication of the quality and quantity of

the substances whose presence is indicated on the packaging, in advertisements, or in the names of cosmetic products covered by the directive.

National rules requiring information not referred to in the directive

- Article 6(1)(a) of the directive prohibits a Member State from requiring that the name of the undertaking established and responsible for marketing in that State should be given on the packaging, containers or labels of the products.

From its wording, it is clear that Article 6(1)(a) of the directive requires only the indication of either the manufacturer or the person responsible for marketing the cosmetic product, in so far as one or the other is established within the Community. It follows that the paragraph in question prohibits a Member State from requiring, in the case of imported cosmetic products, manufactured by a producer established in the Community, that the name of the distributor established and responsible for marketing in that State should be given on the packaging, containers or labels of the products. It is immaterial in that regard that the Member State requires merely that it must be possible to add the particulars of the distributor on the outer packaging of the product after importation and before sale to the public by means which do not make it necessary to open the packaging of the product. Such an obligation makes it in any event more costly to distribute the products and thus entails a barrier to trade, the removal of which is the aim of the directive. The answer to the second question must therefore be that Article 6(1)(a) of the directive prohibits a Member State from requiring, in the case of imported cosmetic products, manufactured by a producer established in the Community, that the name of the undertaking established and responsible for marketing in that Member State should be given on the packaging, containers or labels of the products.

Source: eur-lex.europa.eu

European Court of Justice, 23 November 1989

(C. N. Kakouris, F. A. Schockweiler, T. Koopmans, G. F. Mancini and T. F. O' Higgins)

In Case C-150/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the Landgericht Koeln (Regional Court, Cologne) for a preliminary ruling in the action pending before that court between

Kommanditgesellschaft in Firma Eau de Cologne & Parfümerie-Fabrik Glockengasse No 4711, Cologne, and

Provide SRL, Brembate Sopra

on the interpretation of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (Official Journal 1976, L 262, p. 169),

THE COURT (Sixth Chamber)

composed of : C. N. Kakouris, President of Chamber,
F. A. Schockweiler, T. Koopmans, G. F. Mancini and
T. F. O' Higgins, Judges,
Advocate General : M. Darmon
Registrar : J.-G. Giraud
after considering the observations submitted on behalf
of
the plaintiff in the main proceedings, by E. Ph. Krings,
Rechtsanwalt,
the defendant in the main proceedings, by C. Eidam,
Rechtsanwalt, at the hearing,
the Government of the Kingdom of Spain, by Rosario
Silva de Lapuerta, acting as Agent, at the hearing,
the Government of the Italian Republic, by I. M. Bra-
guglia, avvocato dello Stato,
the Commission of the European Communities, by Jo-
ern Sack, a member of its Legal Department, acting as
Agent,
having regard to the Report for the Hearing and further
to the hearing on 27 June 1989,
after hearing the [Opinion of the Advocate General](#)
delivered at the sitting on 13 July 1989,
gives the following

Judgment

Grounds

1 By order dated 4 May 1988 which was received at the
Court on 26 May 1988, the Landgericht Koeln referred
to the Court for a preliminary ruling under Article 177
of the EEC Treaty two questions on the interpretation
of Council Directive 76/768/EEC of 27 July 1976 on
the approximation of the laws of the Member States
relating to cosmetic products (Official Journal 1976, L
262, p. 169), for the purpose of determining whether
the Italian rules adopted to implement that directive
were compatible with Community law.

2 Those questions were raised in proceedings between
the German company Kommanditgesellschaft in Firma
Eau de Cologne & Parfümerie-Fabrik Glockengasse
No 4711 (hereinafter referred to as "4711 ") and the
Italian company Provide SRL, in connection with the
performance of a contract for the sale of cosmetic
products.

3 Under Article 6(1)(a) of the directive, Member States
are to take all measures necessary to ensure that cos-
metic products may be marketed only if their
packaging, containers or labels bear, inter alia, the
name or style and the address or registered office of the
manufacturer or the person responsible for marketing
the cosmetic product who are established within the
Community. Article 6(2) provides that Member States
are also to take all measures necessary to ensure that in
the labelling, presentation for sale and advertising of
cosmetic products, the wording, use of names, trade
marks, images or other signs, figurative or otherwise,
suggesting a characteristic which the products in ques-
tion do not possess, is prohibited.

4 Article 8(1)(a) of Italian Law No 713 of 11 October
1986, implementing Article 6(1)(a) of the abovementioned
directive, as interpreted by ministerial circular,
requires that the name of the Italian producer of a cos-
metic product or the person in Italy responsible for

marketing the product should be mentioned. For prod-
ucts already bearing details of the producer or person
responsible for marketing who is established in another
Member State, it is sufficient if the Italian undertaking
responsible for marketing in Italy indicates its particu-
lars on the outer packaging of the product after
importation and before sale to the public. Article
8(1)(d) of the abovementioned law, which implements
Article 6(2) of the directive, requires an indication of
the quality and quantity of the substances whose pres-
ence is indicated on the packaging, in advertisements or
in the product's name.

5 Provide ordered from 4711 a quantity of Vitamol, a
cosmetic product whose packaging and instructions for
use mentioned the names of the vitamins it contained
and in particular D-Panthenol. 4711 guaranteed, inter
alia, that the product in question satisfied the laws and
other legal provisions in force and could be marketed in
Italy.

6 Provide subsequently refused to take delivery of the
order on the ground that it did not comply with the
terms of the contract. The product was not marketable
in Italy because, contrary to the abovementioned provi-
sions of Italian law, there was no indication of either
the Italian importer or the quantities of the vitamins
contained in the product, although the names of those
vitamins were expressly mentioned on the packaging.

7 4711 brought proceedings before the Landgericht
Koeln, which had jurisdiction under the terms of the
contract, to obtain performance, claiming in substance
that the product provided complied fully with the re-
quirements of the directive and was therefore
marketable in all the Member States.

8 The Landgericht Koeln considers that the Italian leg-
islation is contrary to the abovementioned provisions of
the directive. In particular, the national court considers
that although the obligation to indicate the quality and
the quantity of substances does provide a means of
achieving the objective pursued by Article 6(2) of the
directive, namely that of preventing consumers from
being misled in any way, that obligation goes too far
and its effectiveness is open to doubt.

9 The Landgericht therefore decided to stay the pro-
ceedings and to submit to the Court for a preliminary
ruling under Article 177 of the EEC Treaty the follow-
ing questions :

"(1) Is Article 8(1)(d) of Italian Law No 713 of 11 Oc-
tober 1986 compatible with Article 6(2) of the Council
Directive of 27 July 1976 and Article 30 of the EEC
Treaty inasmuch as it requires an indication of the qual-
ity and quantity of the substances whose presence is
indicated on the packaging, in advertisements, or in the
product's name?

(2) Is Article 8(1)(a) of Italian Law No 713, as con-
strued in the Italian Minister of Health's circular of 2
February 1987, No 3, compatible with Article 6(1)(a)
of the Council Directive of 27 July 1976 and Article 30
of the EEC Treaty inasmuch as even in the case of
products of a manufacturer established in the Commu-
nity which are imported into Italy 'the name of the

Italian undertaking responsible for marketing' must be given on the packaging, containers or labels?"

10 Reference is made to the Report for the Hearing for a fuller account of the legal background, the facts of the case, the course of the procedure and the written observations submitted to the Court, which are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

Jurisdiction of the Court

11 The Italian Government notes that the preliminary questions arose in the context of a dispute between individuals, the genuineness of which is open to doubt, and that they are intended to permit a court in one Member State to determine whether the rules of another Member State are compatible with Community law. Referring to the Court's judgment of 16 December 1981 in Case 244/80 Foglia v Novello ((1981)) ECR 3045, the Italian Government therefore expresses its doubts as to the propriety of the request for a preliminary ruling. It further maintains that the Court has no jurisdiction under Article 177 to rule on the compatibility of national legislation with Community law.

12 Those objections must be dismissed. First, the documents before the Court do not allow any doubt as to the genuineness of the dispute in the main proceedings or, therefore, the propriety of the request for a preliminary ruling. Secondly, the Court has consistently held (see, in particular, its judgment of 9 October 1984 in Joined Cases 91 and 127/83 Heineken Brouwerijen BV v Inspecteurs der Vennootschapsbelasting, Amsterdam and Utrecht ((1984)) ECR 3435) that, when ruling on questions intended to permit the national court to determine whether national provisions are in accordance with Community law, the Court may provide the criteria for the interpretation of Community law which will enable the national court to solve the legal problem with which it is faced. The same is true when it is to be determined whether the provisions of a Member State other than that of the court requesting the ruling are compatible with Community law.

The first question

13 The first question seeks, essentially, to determine whether Article 6(2) of the directive, cited above, precludes national rules from requiring an indication of the quality and quantity of the substances whose presence is indicated on the packaging, in advertisements, or in the names of cosmetic products.

14 It must be pointed out that the directive was prompted, in the words of one of the recitals in its preamble, by the need "to determine at Community level the regulations which must be observed as regards the composition, labelling and packaging of cosmetic products". The directive thus seeks to eliminate the differences between national laws, which oblige Community producers to vary their production according to the Member State for which the products are intended and thus hinder trade in those products.

15 Article 6(1) of the directive lists the information which the packaging, containers or labels of cosmetic products are to bear; that list does not include informa-

tion as to the quality and quantity of the substances mentioned in the presentation of those products.

16 Furthermore, Article 7(1) of the directive provides that Member States may not refuse, prohibit or restrict the marketing of any cosmetic products which comply with the requirements of the directive, subject only to the proviso, in Article 7(2), that they may require that certain of the particulars provided for in Article 6(1) be expressed in their own national or official language or languages.

17 It follows that that list of information is exhaustive, and that a Member State may not require the indication, not expressly provided for in the directive, of particulars as to the quality and quantity of the substances mentioned in the presentation of cosmetic products.

18 Because of the implied obligation to modify the packaging in which the products are legally marketed in certain Member States, such a requirement is likely to hinder trade within the Community. A distributor established in one of those States may even encounter difficulty in exporting cosmetic products to another Member State, if that State requires the indication in question and the producer does not provide the distributor with the requisite information.

19 It must be added that, whilst Article 6(2) of the directive requires Member States to take the measures necessary to ensure that, in the labelling or presentation for sale of cosmetic products, wording, names, trade marks, images or other signs suggesting a characteristic which the products in question do not possess are prohibited, it does not authorize Member States to require information not provided for in the directive on the labelling or packaging of those products.

20 Furthermore, the underlying aim of Article 6(2) of the directive, that of protecting consumers, may be achieved by means less restrictive of Community trade. It appears from a comparison of the national provisions adopted for that purpose that certain Member States have laid down a general prohibition of any indication likely to mislead the consumer. There is nothing to suggest that such a general prohibition is inadequate to achieve the desired end.

21 The answer to the first question must therefore be that Article 6(2) of Council Directive 76/768/EEC precludes national rules from requiring an indication of the quality and quantity of the substances whose presence is indicated on the packaging, in advertisements, or in the names of cosmetic products covered by the directive.

The second question

22 This question seeks, essentially, to determine whether Article 6(1)(a) of the directive prohibits a Member State from requiring, in the case of imported cosmetic products, manufactured by a producer established in the Community, that the name of the undertaking established and responsible for marketing in that State should be given on the packaging, containers or labels of the products.

23 From its wording, it is clear that Article 6(1)(a) of the directive requires only the indication of either the manufacturer or the person responsible for marketing

the cosmetic product, in so far as one or the other is established within the Community.

24 It follows that the paragraph in question prohibits a Member State from requiring, in the case of imported cosmetic products, manufactured by a producer established in the Community, that the name of the distributor established and responsible for marketing in that State should be given on the packaging, containers or labels of the products.

25 It is immaterial in that regard that the Member State requires merely that it must be possible to add the particulars of the distributor on the outer packaging of the product after importation and before sale to the public by means which do not make it necessary to open the packaging of the product.

26 Such an obligation makes it in any event more costly to distribute the products and thus entails a barrier to trade, the removal of which is the aim of the directive.

27 The answer to the second question must therefore be that Article 6(1)(a) of the directive prohibits a Member State from requiring, in the case of imported cosmetic products, manufactured by a producer established in the Community, that the name of the undertaking established and responsible for marketing in that Member State should be given on the packaging, containers or labels of the products.

28 Since the directive has provided exhaustively for the harmonization of national rules on the packaging and labelling of cosmetic products, it is not necessary to give a ruling on the interpretation of Article 30 of the Treaty as requested by the national court.

Costs

29 The costs incurred by the Kingdom of Spain, the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Landgericht Koeln, by order of 4 May 1988, hereby rules :

(1) Article 6(2) of Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products precludes national rules from requiring an indication of the quality and quantity of the substances whose presence is indicated on the packaging, in advertisements, or in the names of cosmetic products covered by the directive;

(2) Article 6(1)(a) of the aforesaid directive prohibits a Member State from requiring, in the case of imported cosmetic products, manufactured by a producer established in the Community, that the name of the undertaking established and responsible for marketing in that Member State should be given on the packaging, containers or labels of the products.

Opinion of the Advocate-General

Mr President,

Members of the Court,

1. The Landgericht Koeln has referred to the Court for a preliminary ruling two questions on the interpretation of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (hereinafter referred to as "Directive 76/768 "). (1)

2. The facts are as follows. The Italian company Provide placed an order with the German company Firma Eau de Cologne & Parfümerie-Fabrik (hereinafter referred to as "ECPF ") for some Vitamol-based cosmetic products. ECPF warranted that the goods would conform with the legal provisions in force in Italy and could be marketed there. Provide refused to take delivery of the goods because they could not be offered for sale on the Italian market. The packaging and the enclosed instructions for use of the products mentioned that the products contained vitamins and in particular D-Panthenol but did not indicate the quantity. Moreover, they did not give the name of the Italian importer. However, Italian Law No 713 of 11 October 1986 (2) (hereinafter referred to as "the Italian Law ") prescribes (Article 8(1)) that "the packages, containers or labels of cosmetic products must... bear" in particular "the name or style and address or registered office of the manufacturer or the person responsible for marketing the cosmetic product" and "an indication of the quality and quantity of the substances whose presence is indicated on the packaging, in advertisements or in the name of the product, excluding those used to perfume the product and alcohol-based perfumery products ".

3. Before the Landgericht Koeln, before which proceedings were instituted pursuant to a choice-of-forum clause in the contract between the companies in question, ECPF claimed that the Italian Law was contrary to Directive 76/768.

4. The Landgericht therefore referred to the Court for a preliminary ruling two questions which are intended essentially, on the one hand, to determine what requirements a Member State may impose for the labelling of cosmetic products in order to satisfy the objectives of Directive 76/768 and, on the other, to interpret that directive with respect to the indications of the origin of cosmetic products which must, or must not, appear on the packaging thereof.

5. Let me say straight away, to dispose of the matter immediately, that it is not appropriate in this case for the Court to adopt the same attitude as in Case 244/80. (3) The national provisions at issue prompted the Italian company to refuse to take delivery of the goods ordered by it, with the result that it was sued by the other party to the contract for failure to discharge its contractual obligations, before the court specified in the contract. This court, on the basis of similar facts which led the Landgericht Hamburg to submit a question for a preliminary ruling on the Belgian law on the marketing of margarine, took the view that the information before

it left no room for any doubt as to the genuineness of the dispute. (4)

6. It seems to me, however, that it will be necessary to reformulate the questions since, as the Court has consistently held, in particular in the Pretore di Salò judgment,

"it may not, in proceedings under Article 177, rule on the conformity of national measures with Community law ". (5)

7. However, as the Court has frequently stated, it may "provide the national court with the criteria for the interpretation of Community law which will enable it to decide for itself the issue before it ". (6)

8. Let us examine successively each of the two questions submitted.

9. The first concerns Article 8(1)(d) of the Italian Law, which requires "details of the quality and quantity of the substances whose presence is indicated on the packaging, in advertisements or in the name of the product ". According to the Italian Government, (7) that provision is in conformity with Article 6(2) of the directive, which requires the Member States to "take all measures necessary to ensure that in the labelling, presentation for sale and advertising of cosmetic products, the wording, use of names, trade marks, images or other signs, figurative or otherwise, suggesting a characteristic which the products in question do not possess, shall be prohibited ". Article 6(1) sets out the information which must appear on the packaging, containers or labels of the products. That information does not include details of the quality of the substances mentioned on the labels. Moreover, pursuant to Article 7(1), the Member States may not refuse, prohibit or restrict the marketing of products which comply with the requirements of Directive 76/768. Article 7(2) allows a single exception : Member States may require that certain of the items of information which are compulsory under Article 6(1) be expressed in their own national or official language or languages.

10. ECPF claims that the Italian Law is contrary to both Article 6(2) of the directive and Article 30 of the Treaty, essentially on the grounds that, on the one hand, the obligation to give details of the quantities of the substances mentioned constitutes a barrier to trade, in so far as it leads to a partitioning of the markets, and, on the other, that imperative requirements relating to consumer protection would be just as well fulfilled by a general prohibition of any labelling, presentation or advertising of a misleading nature. The Italian legislation is thus unacceptable in that it contravenes the principle of proportionality.

11. The Member States retain powers to lay down measures justified by imperative requirements or on the grounds mentioned in Article 36 of the Treaty only to the extent to which Directive 76/768 has not harmonized the rules on the packaging and labelling of cosmetic products. The Court has on numerous occasions pointed out that

"where, in application of Article 100 of the Treaty, Community directives provide for the harmonization of the measures necessary to ensure the protection of ani-

mal and human health and establish Community procedures to check that they are observed, recourse to Article 36 is no longer justified and the appropriate checks must be carried out and the measures of protection adopted within the framework outlined by the harmonizing directive ". (8)

12. It is therefore necessary to consider whether the general scheme and the special provisions of Directive 76/768 have in fact fully harmonized the rules on the packaging and labelling of cosmetic products.

13. The preamble to the Community directive seems to me to suggest that that is the case. It is stated in the first recital that "the provisions laid down by law, regulation or administrative action in force in the Member States... prescribe rules for ((the)) labelling and... packaging" of cosmetic products, and in the second that "the differences between these laws oblige Community cosmetic producers to vary their production according to the Member State for which their products are intended"; and then, in the fourth recital, the Community legislature declares that "it is necessary to determine at Community level the regulations which must be observed as regards the... labelling and packaging of cosmetic products ". Those considerations led it to adopt the central provision of the directive, namely Article 7(1), which provides that a Member State may no longer refuse, prohibit or restrict the marketing of cosmetic products which comply with the requirements of the directive. That provision seems to me to demonstrate the comprehensive nature of the harmonization thereby accomplished. Moreover, Article 12 of the directive grants Member States the possibility of temporarily preventing the marketing on their territory of cosmetic products which, although complying with the requirements of the directive, represent a hazard to health. The Commission may then refer the matter to the Committee on the adaptation to technical progress of the directives for removing technical barriers to trade, pursuant to Articles 9, 10 and 12 of the directive. Thus, the system provided for by the directive appears to be absolutely complete; in particular it caters for situations calling for rapid intervention with a view to the protection of health. It seems to me therefore that the matter at issue - the labelling and packaging of cosmetic products - has been totally harmonized and that, in consequence, the Member States may no longer impose the requirement that cosmetic products placed on the market should bear information not prescribed by the directive and prevent the marketing thereof if such information is not given. Article 6(2) is a measure intended to obviate fraud, that is to say it is negatively prescriptive. The Member States may therefore not, in order to apply such measures, impose requirements of a positively prescriptive nature which are liable to impede intra-Community trade in an area in which there has been total harmonization. It would be entirely paradoxical to allow the provisions of a directive designed to ensure the free movement of cosmetic products within the Community to be used to frustrate such free movement. Furthermore, one commentator has stated,

with respect to Directive 76/768, that "the composition of cosmetics need not be indicated..." (9)

14. In the same way, with respect to similar provisions in Directive 70/524/EEC of the Council of 23 November 1970 concerning additives in feedingstuffs, (10) the Court stated in *Dansk Denkavit* that

"the directive was intended to harmonize all the substantive conditions for the marketing of animal feedingstuffs..., including the qualitative criteria", and concluded that

"it is not therefore for the Member States to determine such qualitative criteria at national level". (11)

15. We should also note that Article 7(2), which allows Member States to require the prescribed information to be expressed in their own official or national language or languages, constitutes the only exception allowed by the directive to the harmonization which it imposes in the area of packaging and labelling of cosmetic products. In other words, the Community legislature itself provided for the only case in which a Member State may prevent the marketing in its own territory of products complying with the requirements of the directive, by requiring that information should be expressed in a particular language; it follows that the Member States have no right to obstruct the marketing of imported products by requiring other particulars to appear which are not mentioned in the directive.

16. I should finally mention the fact that, with respect to animal feedingstuffs, Article 2(1) and (2) of Council Directive 79/112/EE (12) ("Directive 79/112") also contain similar provisions, according to which the labelling must not be such as could mislead purchasers, particularly as regards the characteristics of the foodstuff. Article 2(3) provides that the "prohibitions or restrictions referred to in paragraphs (1) and (2) shall apply also to the presentation of foodstuffs". (13) The fact that in that case the Community legislature used the expression "prohibitions or restrictions" shows clearly that it does not intend to allow the imposition of positive obligations in order to attain the desired objective. Similarly, Article 2(2) provides that "the Council shall draw up a non-exhaustive list of the claims within the meaning of paragraph (1), the use of which must at all events be prohibited or restricted". (14) Here again, the only measures involved are prohibitions or restrictions.

17. We must therefore conclude that, by calling upon the Member States to take all measures necessary to ensure that the presentation and labelling of cosmetic products are not used to attribute to them characteristics which they do not possess, Article 6(2) allows them to lay down a restrictive measure prohibiting any presentation which is liable to be misleading or, in accordance with the Court's judgment in *De Kikvorsch*, (15) a prohibition of the provision of certain information on the products if it is likely to cause confusion and attribute to them characteristics which they do not possess. However, it does not authorize them to jeopardize the harmonization which has been achieved by requiring information to be shown on the packaging of those

products which is not provided for in the Community legislation.

18. The legal provisions adopted in this area by certain Member States do not impose the same obligations. Those States have chosen to impose a general prohibition on any presentation or labelling which is misleading, a prohibition which is in some cases specific to cosmetic products (Federal Republic of Germany, (16) Belgium, (17) Luxembourg (18) and the Netherlands (19)) and in some cases more generally applicable (United Kingdom, (20) Denmark (21) and Portugal (22)).

19. It seems to me therefore that legislation, like the Italian legislation, which requires details to be given of the quantities and quality of the substances referred to on the packaging of cosmetic products, constitutes a barrier to trade between Member States, in so far as it requires changes to be made to the label under which the product is lawfully marketed in certain Member States. Such legislation is conducive to a partitioning of the markets, a result which Directive 76/768 is intended to eliminate.

20. The objective laid down in Article 6(2) of the directive could have been attained by means less restrictive of intra-Community trade. A general requirement prohibiting any presentation or labelling likely to mislead the consumer seems wholly adequate both to ensure fair trading and consumer protection. It is hardly likely that a traditional user of cosmetic products will be in a position to know whether a particular substance mentioned on the label should account for 5% or 0.5% of the composition of the product in order to have an effect. Moreover, such a measure would not prevent unscrupulous manufacturers from giving spurious quantitative information, in which case, in order to ensure full compliance with Article 6(2) of Directive 76/768, it would be necessary for the competent national authorities to have the products in question analysed in order to discover any fraud. The solution of imposing a general prohibition has, as I have said, been chosen by the majority of the Member States and it does not, as things stand, appear that it falls short of what is required in order to attain the desired objective.

21. Finally, the Court may have allowed that "consumer protection may also entail a prohibition of the provision of certain information on the products, particularly if that information may be confused by the consumer with other information required by the national rules", (23)

but it certainly did not say that a positive obligation could be imposed in order to achieve that same objective.

22. The adoption of a measure such as the national measure in question thus seems to me to be wholly precluded by Articles 6 and 7 of Directive 76/768.

23. The second question submitted by the national court relates to Article 8(1)(a) of the Italian Law which requires the name or style and address or registered office of the manufacturer or person responsible for marketing the product to be indicated on the packaging, containers or labels of cosmetic products.

24. That provision is designed to give effect in Italian law to Article 6(1)(a) of Directive 76/768, which requires an indication of "the name or style and the address or registered office of the manufacturer or person responsible for marketing the product who are established within the Community". (24)

25. Circular No 1 of the Italian Ministry of Health dated 2 February 1987 (25) states that the abovementioned provision of the Italian Law must be regarded as referring to the Italian manufacturer or the person in Italy responsible for marketing the product.

26. It seems to me that the relevant provision of the directive cannot be interpreted as permitting such a requirement. Article 6(1)(a) is intended only to require details of the manufacturer or person responsible for marketing the product in the Community, not on the national market of a Member State. With respect to feedingstuffs, Directive 79/112, Article 3(1)(b) of which contains provisions of a similar kind, expressly provides, in Article 3(2), for the Member States to be able, by way of derogation from Article 3(1), to "retain national provisions which require indication of the factory or packaging centre in respect of home production". No such derogation is contained in Directive 76/768.

27. Moreover, with respect to liability for damage caused by products, Article 3(2) of Council Directive 85/374/EEC (26) defines the importer as the person who imported the product into the Community. That directive applies *inter alia* to cosmetic products. In general, as far as both the marketing conditions and the rules on liability are concerned, trade between Member States must be considered as trade within a single market and therefore regard is to be had only to the identity of the person who places the product on the Community market.

28. In its written observations, the Italian Government refers to the amending provisions of Circular No 22 of 13 May 1987, (27) and expresses the view that "the premise on which the second question is based no longer exists in the applicable Italian rules". (28)

29. Let me say in that regard that that second circular merely allows the indication of the undertaking responsible for marketing in Italy to be affixed to the packaging of the product subsequently, before it is sold to the public. However, Directive 76/768, which has fully harmonized the marketing rules for cosmetic products in the Community, does not require the identity of the person responsible for placing the product on the home market to be given. Any obligation of that kind, which makes the marketing of such products more difficult, entails a distortion of competition between Community undertakings, which the directive was intended to eliminate.

30. It is pointless to seek to rely here on the judgment of this Court of 11 May 1989, since it was stated in that decision that :

"a unilateral measure constituting a barrier to intra-Community trade can only be justified if Community rules have been adopted to regulate the area in question". (29)

31. I therefore propose that the Court should rule as follows :

"Articles 6(1) and (2) and 7(1) of Council Directive 76/768 of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products must be interpreted as not allowing a Member State to impose, as a precondition for the marketing of cosmetic products, the requirement that the packaging, containers or labelling thereof should bear information which is not mentioned in Article 6(1), in particular details relating to the quality and quantity of the substances mentioned on the packaging, in advertisements or in the name of the product, or, in the case of imported products, the name or style and address or registered office of the person responsible for marketing the product in the Member State concerned."

(*) Original language : French.

(1) OJ L 262, 27.9.1976, p. 169.

(2) Italian Law No 713 of 11 October 1986 implementing the directives of the European Economic Community on the production and sale of cosmetic products (*Gazzetta ufficiale della Repubblica italiana*, 30.10.1986, General Series No 253, p. 3.

(3) Judgment of 16 December 1981 *Foglia v Novello II* ((1981)) ECR 3045.

(4) Judgment of 10 November 1982 in Case 261/81 *Rau* ((1982)) ECR 3961, paragraph 9.

(5) Judgment of 11 June 1986 in Case 14/86 ((1987)) ECR 2545, paragraph 15; see also judgment of 9 October 1984 in Joined Cases 91 and 127/83 *Heineken* ((1984)) ECR 3435.

(6) Judgment of 13 March 1984 in Case 16/83 *Prantl* ((1984)) ECR 1299, paragraph 10; see also judgment of 18 February 1987 in Case 98/86 *Hathot* ((1987)) ECR 809, paragraph 6.

(7) Observations of the Italian Government, p. 5 of the French translation.

(8) Judgment of 5 October 1977 in Case 5/77 *Tedeschi* ((1977)) ECR 1555, paragraph 35; see also judgment of 5 April 1979 in Case 148/78 *Ratti* ((1979)) ECR 1629, paragraph 36; judgment of 8 November 1979 in Case 251/78 *Denkavit* ((1979)) ECR 3369, paragraph 14; judgment of 3 October 1985 in Case 26/84 *Commission v Federal Republic of Germany* ((1985)) ECR 3097, paragraph 25.

(9) L. Kraemer : "EEC Consumer Law", *Série Droit et Consommation*, 1986, No 191, p. 143.

(10) OJ, English Special Edition 1970 (III), p. 840.

(11) Case 251/78, *supra*, paragraph 16.

(12) Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ L 33, 8.2.1979, p. 1).

(13) Emphasis added.

(14) Emphasis added.

(15) Judgment of 17 March 1983 in Case 94/82 ((1983)) ECR 947, paragraph 12.

(16) *Kosmetisch-Verordnung* BGBI I, p. 1082.

- (17) Royal Decree of 10 May 1978, Moniteur belge, 1.9.1978.
 - (18) Grand-Ducal Regulation of 24 October 1978 on cosmetic products, M. A. 1978, p. 1936.
 - (19) Royal Decree of 3 April 1980, stb 256.
 - (20) Trade Descriptions Act 1968.
 - (21) Law on chemicals No 574, 26.8.1987.
 - (22) Decree-Law No 28-84, 20.1.1984.
 - (23) Case 94/82, *supra*, paragraph 19, emphasis added.
 - (24) Emphasis added.
 - (25) GURI No 44, 23.2.1987.
 - (26) Council Directive (85/374/EEC) of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ L 210, 7.8.1985, p. 29).
 - (27) GURI No 126, 2.6.1987.
 - (28) P. 7 of the French translation.
 - (29) Case 25/88 Bouchara ((1989)) ECR, paragraph 12.
-