

2. Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the event of an allegation of unlawful comparative advertising or unfair imitation of a sign protected by a Community trade mark, prohibited by the law against unfair competition (*Gesetz gegen den unlauteren Wettbewerb*) of the Member State in which the court seised is situated, that provision does not allow jurisdiction to be established, on the basis of the place where the event giving rise to the damage resulting from the infringement of that law occurred, for a court in that Member State where the presumed perpetrator who is sued there did not himself act there. By contrast, in such a case, that provision does allow jurisdiction to be established, on the basis of the place of occurrence of damage, to hear an action for damages based on that national law brought against a person established in another Member State and who is alleged to have committed, in that State, an act which caused or may cause damage within the jurisdiction of that court.

<sup>(1)</sup> OJ C 343, 10.11.2012.

**Judgment of the Court (Fourth Chamber) of 5 June 2014 (request for a preliminary ruling from the Tribunale di Fermo — Italy) — Criminal proceedings against M**

(Case C-398/12) <sup>(1)</sup>

*(Convention implementing the Schengen Agreement — Article 54 — ‘Ne bis in idem’ principle — Scope — Order made by a court of a Contracting State finding that there is no ground to refer a case to a trial court because of insufficient evidence — Possibility of reopening the criminal investigation in the case where new facts and/or evidence come to light — Concept of person whose trial has been ‘finally disposed of’ — Criminal prosecution in another Contracting State of the same person in respect of the same acts — Preclusion of further prosecution and application of the ne bis in idem principle)*

(2014/C 253/09)

Language of the case: Italian

**Referring court**

Tribunale di Fermo

**Party in the criminal proceedings in the main action**

M

**Re:**

Request for a preliminary ruling — Tribunale di Fermo — Interpretation of Article 54 of the Convention implementing the Schengen Agreement — ‘Ne bis in idem’ principle — Concept of ‘person whose trial has been finally disposed of’ — Final decision of no case to answer made by a court of a Member State

**Operative part of the judgment**

Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen (Luxembourg) on 19 June 1990, must be interpreted as meaning that an order making a finding that there is no ground to refer a case to a trial court which precludes, in the Contracting State in which that order was made, the bringing of new criminal proceedings in respect of the same acts against the person to whom that finding applies, unless new facts and/or evidence against that person come to light, must be considered to be a final judgment, for the purposes of that article, precluding new proceedings against the same person in respect of the same acts in another Contracting State.

<sup>(1)</sup> OJ C 355, 17.11.2012.