JUDGMENT OF THE COURT

12 September 2000 *

In Case C-366/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Cour d'Appel de Lyon (France) for a preliminary ruling in the criminal proceedings before that court against

Yannick Geffroy

and

Casino France SNC, liable in a civil capacity,

on the interpretation of Article 30 of the EC Treaty (now, after amendment, Article 28 EC) and Article 14 of 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 (OJ 1979 L 33, p. 1), as amended by Commission Directive 93/102/EC of 16 November 1993 (OJ 1993 L 291, p. 14),

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward (Rapporteur) and L. Sevón (Presidents of Chambers), C. Gulmann, J.-P. Puissochet, P. Jann, H. Ragnemalm and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mr Geffroy and Casino France SNC, by J.-L. Fourgoux, of the Paris Bar,

— the French Government, by K. Rispal-Bellanger, Deputy Director of the Legal Affairs Department at the Ministry of Foreign Affairs, and C. Vasak, Assistant Secretary for Foreign Affairs in the same Department, acting as Agents,

— the Austrian Government, by C. Stix-Hackl, Gesandte in the Federal Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by D. Bethlehem, Barrister,

— the Commission of the European Communities, by R.B. Wainwright, Principal Legal Adviser, and O. Couvert-Castéra, a national civil servant on secondment to the Commission's Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Geffroy and Casino France SNC, represented by J.-L. Fourgoux, of the French Government, represented by S. Pailler, Chargé de Mission at the Legal Affairs Department at the Ministry of Foreign Affairs, acting as Agent, and C. Vasak, and of the Commission, represented by O. Couvert-Castéra, at the hearing on 20 October 1999,

after hearing the Opinion of the Advocate General at the sitting on 25 November 1999,

gives the following

Judgment

1 By a judgment of 16 September 1998, received at the Court on 14 October 1998, the Cour d'Appel (Court of Appeal), Lyon, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Article 30 of the EC Treaty (now, after amendment, Article 28 EC) and Article 14 of 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 (OJ 1979 L 33, p. 1), as amended by

Commission Directive 93/102/EC of 16 November 1993 (OJ 1993 L 291, p. 14) (hereinafter referred to as 'Directive 79/112').

2 The question has been raised in criminal proceedings brought before that court against Mr Geffroy, in his capacity as a buyer with authorisation to act on behalf of the Casino Group, and Casino France SNC ('Casino'), in its capacity as the party bearing civil liability, for the offences of holding for sale, selling or offering for sale foodstuffs under misleading labelling.

Community law

3 Article 2(1) of Directive 79/112 provides:

'The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production,

...'

4 Article 5(1) of Directive 79/112 provides:

'The name under which a foodstuff is sold shall be the name laid down by whatever laws, regulations or administrative provisions apply to the foodstuff in question or, in the absence of any such name, the name customary in the Member State where the product is sold to the ultimate consumer and to mass caterers, or a description of the foodstuff and, if necessary, of its use, that is sufficiently precise to inform the purchaser of its true nature and to enable it to be distinguished from products with which it could be confused.'

5 According to the second paragraph of Article 14 of Directive 79/112:

'The Member States shall, however, ensure that the sale of foodstuffs within their own territories is prohibited if the particulars provided in Article 3 and Article 4(2) do not appear in a language easily understood by purchasers, unless other measures have been taken to ensure that the purchaser is informed. This provision shall not prevent such particulars from being indicated in various languages.'

6 Directive 97/4/EC of the European Parliament and the Council of 27 January 1997, amending Directive 79/112 (OJ 1997 L 43, p. 21), repealed the second paragraph of Article 14 of Directive 79/112 and inserted a new Article 13a, requiring, in particular, the labelling of foodstuffs in a language easily understood by the consumer and permitting Member States to stipulate, in accordance with the rules of the Treaty, that the labelling particulars required by Directive 79/112 are to be given in at least one or more official languages of the Community.

National law

7 The provisions of Decree No 84-1147 of 7 December 1984 applying the Law of 1 August 1905 on frauds and falsifications relating to products or services concerning the labelling and presentation of foodstuffs (JORF (Official Journal of the French Republic) of 21 December 1984, hereinafter 'Decree No 84-1147') have been codified as part of the French Consumer Code.

8 The first paragraph of Article R.112-7 of the Consumer Code (formerly Article 3 of Decree No 84-1147) provides:

'The labels and labelling methods used must not be such as to give rise to confusion in the mind of the purchaser or the consumer, particularly as to the characteristics of the foodstuff and, specifically, as to its nature, identity, properties, composition, quantity, durability, method of conservation, origin or provenance, method of manufacture or production.'

9 Article R.112-8 of the Consumer Code (formerly Article 4 of Decree No 84-1147) provides:

'All the labelling particulars required by this chapter must be easy to understand, be written in French and have no abbreviations other than those provided for by legislation or international agreements. They must appear in an obvious place, in such a way as to be visible, clearly legible and indelible. They must not be concealed or obscured in any way, or separated by other information or images.'

The dispute in the main proceedings and the question referred for a preliminary ruling

10 At an inspection carried out on 5 June 1996 at the Géant Hypermarket (Casino chain) in Clermont-Ferrand, officials of the Direction de la Concurrence, de la Consommation et de la Répression des Fraudes (Department of Competition and Consumer Protection; hereinafter 'the Department') of Puy-de-Dôme found:

— that the labelling on certain drinks, namely 432 bottles of Coca Cola, 47 bottles of Merry Down cider and 22 bottles of Red Raw ginger ale, was not in French, save for the indications of volume and, in the case of the ginger ales, the alcohol content;

— that advertisements showed bottles of cider of the brands OD Pirat and Shock, which, according to the officials of the Department, did not correspond to the 'cider' description, which is reserved for alcoholic drinks made of apples;

— that the shelf labels for the products OD Pirat, Snake Bite and Blackadder also misleadingly represented them as cider.

11 At the conclusion of their findings, the officials of the Department made an official report. At his hearing, Mr Geffroy explained:

— as to the lack of labelling in French, first, that the bottles of Coca Cola had been bought in Great Britain, that it was a well-known product, and that

consumers could not be inconvenienced by labelling in English, which could easily be understood by anybody; that, moreover, a display panel gave a translation of those labels, but a customer must have knocked it over so that it fell to the bottom of the display unit; and, secondly, that the suppliers of the Merry Down ciders and Red Raw ginger ales had made a mistake by failing to provide the adhesive stickers in French to be attached to the bottles, as they had been requested to do;

— as to the descriptions of the ciders, that even if the three products had been described as ciders on the shelf labels, they were nevertheless put on sale on the beers shelf.

12 By a judgment of 18 November 1997, the Tribunal de Police (Criminal Court), Saint-Etienne, imposed 506 fines on Mr Geffroy for the offences of holding for sale, selling or offering for sale foodstuffs with misleading labelling (501 fines of FRF 50 each — the number of fines being equivalent to the number of infringing products — for breach of the rule that the labelling be in French, and 5 fines of FRF 2 000 each for misleading labelling). The court also held Casino liable under civil law.

13 Mr Geffroy, Casino and the Minstère Public (Public Prosecutor's Office) appealed against that judgment before the Cour d'Appel, Lyon. Having doubts as to the compatibility of the French legislation with Community law, that court decided to stay the proceedings and refer 'this case to the Court of Justice of the European Communities, as a matter of interpretation of the [EC] Treaty, for a ruling on the question whether the combined provisions of Article 30 of the Treaty and Article 14 of Council Directive 79/112/EEC of 18 December 1978 preclude the

application of national legislation, such as that in Decree No 84-1147 of 7 December 1984 implementing the Law of 1 August 1905 applicable at the time, as amended by Article L.213-1 et seq. of the Consumer Code'.

The question referred for a preliminary ruling

14 The national court seeks to determine whether certain provisions of Community law preclude the application of national legislation such as Decree No 84-1147. It states that that decree, which has been codified as part of the French Consumer Code, requires, in particular, that the labelling of foodstuffs must not be such as to give rise to confusion in the mind of the purchaser or the consumer and that all particulars which are made compulsory by French legislation must be written in French.

15 In these circumstances, the national court is asking in effect whether Article 30 of the Treaty and Article 14 of Directive 79/112 preclude national legislation which, first, provides that the labelling of foodstuffs and labelling methods used must not mislead the purchaser or consumer to a material degree, particularly as to the characteristics of the foodstuffs, and, secondly, requires the use of a particular language for the labelling of foodstuffs.

16 It should be noted at the outset that the amendment of Article 14 of Directive 79/112, and the insertion of a new Article 13a, mentioned in paragraph 6 of this judgment, took place after the date of the events leading to the case before the national court and are therefore not applicable to those facts.

The first part of the question

17 Article 2(1)(i) of Directive 79/112 provides that the labels and labelling methods used must not be such as could mislead the purchaser to a material degree, particularly as to the characteristics of the foodstuff such as its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production. Obviously, nothing precludes national legislation from reproducing the wording of that Community provision, which Article R.112-7 of the Consumer Code essentially does.

18 As to the application of such national legislation to a particular case, it should be remembered that, in principle, it is not for the Court of Justice, pursuant to the division of jurisdiction between the Community Courts and national courts, to rule on the question whether the labelling of certain products is likely to mislead the purchaser or consumer or to determine whether a sales description is potentially misleading. That task is for the national court, even if the provisions in question are identical in substance to the provisions of Community law.

19 The Court would act otherwise only if the information at the Court's disposal appeared to it to be sufficient and the solution is clear (see Case C-210/96 *Gut Springenheide and Tusky* v *Oberkreisdirektor Steinfurt* [1998] ECR I-4657, paragraph 30). In this case, however, as the Advocate General has pointed out in paragraphs 32 to 35 of his Opinion, the Court does not have the necessary information to rule on this point.

20 When giving a preliminary ruling on a reference, however, the Court may, in appropriate cases, give clarifications to guide the national court in its decision (see Case C-424/97 *Haim* v *Kassenzahnärztliche Vereinigung Nordrhein* [2000] ECR I-5123, paragraph 58).

21 In this respect, the mere fact that the composition of alcoholic drinks made of apples, which have been lawfully manufactured and marketed in a Member State under the description of 'cider', does not comply with the legislation of another Member State regarding the production of cider is not in itself sufficient to prohibit the marketing of those drinks in that latter Member State under the description of 'cider' on the ground that use of that description would be likely to mislead consumers in that State (see, in relation to foie gras, Case C-184/96 *Commission* v *France* [1998] ECR I-6197, paragraph 24).

22 The Court has, however, not excluded the possibility that Member States might require producers or vendors to alter the description of a foodstuff where a product offered for sale under a particular name is so different, in terms of its composition or production, from the products generally understood as falling within that description within the Community that it cannot be regarded as falling within the same category (Case 286/86 *Ministère Public* v *Deserbais* [1988] ECR 4907, paragraph 13; *Commission* v *France*, cited above, paragraph 23).

23 Where the difference is of minor importance, appropriate labelling should be sufficient to provide the purchaser or consumer with the necessary information. It is for the national court to assess whether that is so in the case at issue in the main proceedings.

The second part of the question

24 As to the language requirements concerning the labelling of foodstuffs which a Member State is entitled to impose, the Court has already ruled on this matter a number of times.

25 First, in Case C-369/89 *Piageme* v *Peeters* [1991] ECR I-2971, the Court ruled that Article 30 of the Treaty and Article 14 of Directive 79/112 preclude a national law from requiring the exclusive use of a specific language for the labelling of foodstuffs, without allowing for the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other means.

26 The Court then further ruled in Case C-85/94 *Piageme* v *Peeters* [1995] ECR I-2955 that Article 14 of Directive 79/112 precludes a Member State, as regards the requirement of a language easily understood by purchasers, from requiring the use of the language most widely spoken in the area where the product is offered for sale, even if the use at the same time of another language is not excluded.

27 Finally, in Case C-385/96 *Goerres* [1998] ECR I-4431, the Court ruled that Article 14 of Directive 79/112 does not preclude national legislation which, as

regards language requirements, prescribes the use of a specific language for the labelling of foodstuffs but which also permits, as an alternative, the use of another language easily understood by purchasers.

28 It follows from that case-law that Article 30 of the Treaty and Article 14 of Directive 79/112 must be interpreted as precluding a national rule, such as that at issue in the main proceedings, from requiring the use of a specific language for the labelling of foodstuffs, without allowing for the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other means.

29 The answer to be given to the question referred must therefore be that:

— Article 30 of the Treaty and Article 14 of Directive 79/112 do not preclude a national provision from requiring that the labelling of foodstuffs and the labelling methods used must not mislead the purchaser or consumer, particularly as to the characteristics of those foodstuffs;

— Article 30 of the Treaty and Article 14 of Directive 79/112 preclude a national provision from requiring the use of a specific language for the

labelling of foodstuffs, without allowing for the possibility for another language easily understood by purchasers to be used or for the purchaser to be informed by other means.

Costs

30 The costs incurred by the French, Austrian and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Cour d'Appel, Lyon, by judgment of 16 September 1998, hereby rules:

1. **Article 30 of the EC Treaty (now, after amendment, Article 28 EC) and Article 14 of 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, as amended by Commission Directive 93/102/EC of 16 November 1993, do not preclude a national provision from requiring that the labelling of foodstuffs and the labelling methods used must not mislead the purchaser or consumer, particularly as to the characteristics of those foodstuffs.

2. **Article 30 of the Treaty and Article 14 of Directive 79/112 preclude a national provision from requiring the use of a specific language for the labelling of foodstuffs, without allowing for the possibility for another language easily understood by purchasers to be used or for the purchaser to be informed by other means.**

Rodríguez Iglesias	Moitinho de Almeida	Edward
Sevón	Gulmann	Puissochet
Jann	Ragnemalm	Wathelet

Delivered in open court in Luxembourg on 12 September 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President