REPORT FOR THE HEARING
delivered in Case 382/87 *

I — Facts and procedure

The French company Educational Business Services (hereinafter referred to as 'EBS'), which is managed by Mr Buet, is a subsidiary of the United Kingdom company Encyclopaedia Britannica. EBS marketed by canvassing a method for learning English called English Communications Encounter English.

The tribunal de grande instance (Regional Court), Paris, sentenced Mr Buet to a term of imprisonment and a fine and declared that EBS was liable in civil law for having thus infringed the prohibition on canvassing contained in Article 13 of Law No 71-556 of 12 July 1971 (*Journal officiel de la République française*, 13.7.1971, p. 6907) and Article 8 II of Law No 72-1137 of 22 December 1972 (*Journal officiel de la République française*, 23.12.1972, p. 13348).

Article 13 of Law No 71-556 on the establishment and functioning of private bodies providing home study courses and on advertising and canvassing by educational establishments prohibits canvassing, that is 'going to the private dwelling of an individual in order to obtain the entry into a contract for a course of instruction', on behalf of educational establishments.

Since some of those bodies had attempted to circumvent that prohibition by proposing to sell at private dwellings educational, and in particular, audio-visual material intended to support the instruction which they provided, the French legislature supplemented Article 13 of the abovementioned law with Article 8 II of Law No 72-1137 on the protection of consumers in regard to canvassing and to selling at private dwellings. Article 8 II prohibits canvassing with a view to the sale of any documents or materials intended to meet the same needs as the supply of a service in respect of which canvassing is prohibited by a special provision of the law by virtue of the subject of that canvassing.

The tribunal de grande instance, Paris, took the view that the material sold by EBS was caught by the condition in Article 8 II, since it met the same needs as the supply of services provided by a home study body for which canvassing is prohibited by Article 13 of Law No 71-556.

Before the cour d'appel (Court of Appeal), Paris, Mr Buet asked that he be acquitted. He put forward two arguments in support of his plea. On the one hand the learning method marketed by EBS did not constitute a home study course (enseignement privé à distance) since there was no pedagogical supervision on the part of EBS and it was thus not caught by the prohibition on canvassing. Secondly the prohibition was in any event contrary to the provisions of

* Language of the case: French.

Article 30 *et seq.* of the EEC Treaty in that it required him to abandon a particularly effective sales technique and would thus restrict the sale of the products in question on the French market.

The cour d'appel, Paris, rejected the first argument but in view of the second argument decided to stay the proceedings and to request a preliminary ruling on the interpretation of Article 30 of the Treaty. The question is worded as follows:

'Is Article 30 of the Treaty of 25 March 1957 establishing the European Economic Community compatible with Article 13 of Law No 71-556 on 12 July 1971 in conjunction with Article 8 II of Law No 72-1137 of 22 December 1972'?

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, written observations were lodged on 25 March 1988 by Mr Buet and EBS, defendants in the main proceedings, represented by Mr de Holmsky, and by the Commission of the European Communities, represented by its legal adviser, Mr Seché; on 5 April 1988 by the French Government, represented by Messrs de Gouttes and Chavance; and on 6 April 1988 by the Danish Government, represented by its Legal Adviser, Mr Molde.

Upon hearing the Report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. By an order of 27 October 1988, adopted pursuant to Article 95(1) and (2) of the Rules of Procedure the Court assigned the case to the Fifth Chamber.

II — Written observations submitted to the Court

(a) *The existence of an obstacle to the free movement of goods*

Mr Buet submits that while the prohibition of canvassing is applicable without distinction to domestic and imported products, it may cause an obstacle to the importation of the educational material in question. That is clear from the judgment of the Court of 15 December 1982 in Case 286/81 *Oosthoek* [1982] ECR 4575, according to which legislation which prohibits certain means of sales promotion may restrict imports of the product in question when it forces the trader concerned to abandon a system which he considers particularly effective and to adopt different systems of promotion.

In the view of the French and Danish Governments, the prohibition in question has only a minimum effect upon trade between Member States since it concerns only one form of marketing, namely canvassing. There is nothing to prevent EBS from marketing its material, as its competitors do, by means of a distribution network, bookshops or correspondence. The Court held in its judgment of 31 March 1982 in Case 75/81 *Blesgen* v *Belgium*

[1982] ECR 1211 that a prohibition such as that at issue did not go beyond the due limits of commercial rules and did not restrict imports since it concerned only one form of marketing of the product in question.

The Commission notes first of all that the judgment containing the reference does not expressly state whether the material in question was imported from another Member State. It points out, however, that the national court states that the contested method of learning was developed by Encyclopaedia Britannica, which seems to indicate that EBS merely markets in France a product originating in the United Kingdom.

It then observes that it is clear from the judgment of 15 December 1982 (in *Oosthoek*) that a prohibition of one method of marketing is likely to affect the sale of a product and in consequence reduce imports.

(b) *The existence of mandatory requirements relating to the protection of consumers and fair trading*

Without denying that the rules in question were inspired by the concern to protect consumers, Mr Buet argues that prohibiting canvassing is disproportionate in relation to the objective contemplated and ought to be replaced by less restrictive rules such as the requirement of a written contract, the prohibition of immediate payment and allowing the purchaser a right to withdraw. In his view the material in question has no greater attractive power than that of other products for which canvassing is not prohibited, such as new cars or loans of money.

Mr Buet also refers to the Council Directive of 20 December 1985 on the protection of the consumer in respect of contracts negotiated away from business premises (Official Journal 1985, L 372, p. 31), which is intended solely to require Member States to give the purchaser a right to cancel. He concedes that Article 8 of the directive allows Member States to adopt or maintain more favourable provisions to protect the interests of consumers and that the last recital in the preamble to the directive expressly mentions in that respect the prohibition of canvassing. The effect of the directive, however, cannot be to exempt Member States from their obligation to observe the provisions of Article 30 *et seq.* of the Treaty

The French Government considers that the prohibition of canvassing is proportionate to its aim, which is to protect the consumer. It is above all the elderly, immigrants seeking access to the labour market and the parents of children in difficulty at school who are sought out by canvassers, which makes the risk of abuse particularly great. It is, moreover, as a result of numerous complaints recorded by the public authorities and the Institut national de la consommation (National Consumer Institute) that the French legislature adopted the prohibition in question.

Moreover, since education is not a product of immediate consumption, the uncon-

sidered purchase may have a disadvantageous and more permanent effect upon the recipient than a simple financial loss.

The French Government also states that the Council directive referred to above allows it to retain its current rules.

The Danish Government also considers that the prohibition of canvassing is justified in view of the fact that that form of marketing involves a special risk of abuse and that the Council expressly authorized Member States to maintain or introduce such a prohibition.

In the Commission's view the Council can certainly not authorize Member States to adopt measures which would be an obstacle to the free movement of goods. However, in the aforementioned directive the Council simply recognized that a measure prohibiting canvassing may in certain cases be proportionate to the objective of protecting consumers. Since the case concerns home study courses for a foreign language, the risks of deception are in practice much greater in so far as the purchasers' ignorance of the subject taught prevents him from making a choice based on the relationship between the quality of the product and the price.

R. Joliet
Judge-Rapporteur