Case 352/87

Farzoo Inc.
and
Jacobus Albertus Wybrand Maria Joseph Kortmann
v
Commission of the European Communities

(Inadmissibility)

Order of the Court of 27 April 1988 2281

Summary of the Order

Procedure — Time-limit for instituting proceedings — Barring of proceedings

The strict application of Community rules regarding time-limits for instituting proceedings corresponds to the requirement of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice. Derogation is possible only in the event of unforseeable circumstances or *force majeure.*

ORDER OF THE COURT
27 April 1988 *

In Case 352/87

Farzoo Inc., a company incorporated under the laws of the State of Delaware, United States of America,

and

* Language of the Case: Dutch.

Jacobus Albertus Wybrand Maria Joseph Kortmann, residing at Helmond, The Netherlands,

both represented by I. M. van den Heuvel, advocat at Roosendaal, The Netherlands, with an address for service in Luxembourg at the Chambers of Mark Loesch, 8, rue Zithe,

applicants,

v

Commission of the European Communities, represented by Thomas van Rijn, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg

defendant,

APPLICATION for a declaration that Article 2 of Commission Directive 87/137/EEC of 2 February 1987 (Official Journal 1987, L 56, p. 20) is void,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: J.-G. Giraud

After hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 30 October 1987, Farzoo Inc. and J. A. W. M. J. Kormann brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that Article 2 of Commission Directive 87/137/EEC of 2 February 1987 adapting to technical progress Annexes II, III, IV, V and VI to Council Directive 76/768/EEC on the approximation of

the laws of the Member States relating to cosmetic products (Official Journal 1987, L 56, p. 20) was void.

2 By an application lodged at the Court Registry on 19 January 1988, the Commission raised an objection of inadmissibility under Article 91 (1) of the Court's Rules of Procedure. It asked the Court to declare the action inadmissible without examining the substance of the case, on the ground *inter alia* that the time-limit for commencing proceedings had not been complied with and that, in any event, an action for annulment brought in respect of a directive was not admissible.

3 In their written observations on the formal objection of inadmissibility, the applicants argue that a failure to comply with the time-limit for bringing proceedings for which an applicant provides a valid justification should not mean that the proceedings are time-barred. Before bringing their action, they entered into correspondence with the Commission in the course of which that institution made no mention of any time-limit for bringing the matter before the Court. Secondly, the applicants consider that, in the light of its purpose and its content, Article 2 of the directive constitutes a disguised decision.

4 According to Article 91 (3) of the Rules of Procedure, unless the Court decides otherwise, the remainder of the proceedings relating to a preliminary objection are to be oral. The Court considers that it is not necessary to open the oral procedure and, in accordance with Article 91 (4), has decided to give its decision on the preliminary objection on the basis of the written pleadings.

5 According to the third paragraph of Article 173 of the Treaty, the proceedings provided for in that article must be instituted within two months of the publication of the measure, or of its notification to the applicant, or in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

6 In this respect it is not in dispute that Commission Directive 87/137/EEC was published in the Official Journal of 26 February 1987. Moreover, the applicants acknowledge that they were aware of the contents of the directive of 27 March 1987. Whichever of these two dates is to be taken into consideration in determining the starting point for the period for bringing proceedings laid down in the third paragraph of Article 173, the present action is in any event out of time. The application was not lodged at the Court Registry until 30 October 1987.

7 As regards the applicants' argument to the effect that in certain circumstances failure to comply with the time-limit must be regarded as excusable, it must be pointed out that according to a consistent line of decisions of the Court the strict application of Community rules regarding time-limits for instituting proceedings corresponds to the requirement of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see *inter alia* the judgment of 15 January 1987 in Case 152/85 *Misset* v *Commission* [1987] ECR 223). Furthermore, the applicants have neither established nor even pleaded the existence of unforeseeable circumstances or *force majeure* which might have prevented them from instituting proceedings within the prescribed period.

8 It follows from the foregoing that the application was out of time and that the action must be dismissed as inadmissible without there being any need to consider the other arguments put forward by the parties.

Costs

9 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions, they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders as follows:

(1) The application is dismissed as inadmissible.

(2) The applicants are ordered to pay the costs.

Luxembourg, 27 April 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President