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The Role of Consent and Consumer Protection in Reconciling Articles 30 and 36 in Hag I and Hag II

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Anna Lo Monaco

Abstract

This Article explores the S.A. CNL-Sucal NV v. Hag GF AG (“Hag II”) judgment of October 17, 1990, of the Court of Justice of the European Communities and how the decision offers an opportunity to elaborate on the role of consent in reconciling the principle of the free movement of goods with the existence of national intellectual property rights in European Community law.

RECENT DEVELOPMENT

THE ROLE OF CONSENT AND CONSUMER PROTECTION IN RECONCILING ARTICLES 30 AND 36 IN *HAG I* AND *HAG II*

*Anna Lo Monaco**

INTRODUCTION

The *S.A. CNL-Sucal NV v. Hag GF AG* ("*Hag II*")¹ judgment of October 17, 1990 of the Court of Justice of the European Communities (the "Community Court" or "Court") offers an opportunity to elaborate on the role of consent in reconciling the principle of the free movement of goods with the existence of national intellectual property rights in European Community law ("EEC law").

The judgment recognized the right of Hag GF AG ("German Hag") to restrain imports of decaffeinated coffee lawfully marketed in another Member State under the Hag trademark. In so doing, the Court expressly overruled the doctrine of common origin formulated by the Court in *Van Zuylen Frères v. Hag AG* ("*Hag I*")² and re-established a more favorable approach to the protection of trademark rights. This new approach, based on the absence of consent and on some aspects of consumer protection, recognized the importance of trademarks as an essential factor in a system of undistorted competition, which is one of the aims of the Treaty of Rome (the "EEC Treaty").³

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1. Case C-10/89, [1990] E.C.R. ___, [1990] 3 C.M.L.R. 571 [hereinafter *Hag II*].

2. Case 192/73, [1974] E.C.R. 731, [1974] 2 C.M.L.R. 127 [hereinafter *Hag I*]. This is one of the most annotated and criticized cases in EEC law. See, e.g., F.A. Mann, *Industrial Property and the EEC Treaty*, 24 INT'L & COMP. L.Q. 31 (1975); F.G. Jacobs, *Industrial Property and the EEC Treaty: a Reply*, 24 INT'L & COMP. L.Q. 643 (1975). It is interesting to note that Advocate General Jacobs has changed position since then. In this comment he considered unconvincing the criticism that the *Hag I* judgment was a source of deception on the ground that it would have been possible to insist that the origin of the product be shown. Jacobs, *supra*, at 652.

3. Treaty Establishing the European Economic Community, Mar. 25, 1957,

I. *BACKGROUND*

In 1927, German Hag, the inventor and manufacturer of Hag decaffeinated coffee, set up a wholly-owned and controlled subsidiary in Belgium under the name Café Hag SA ("Belgian Hag"). A few years later, German Hag transferred to Belgian Hag the trademarks which it had registered in its own name in Belgium. After the Second World War, the Government expropriated Belgian Hag as enemy property and transferred it to a third party. In 1971, Belgian Hag assigned its trademark, which had been converted into Benelux registrations, to Van Zuylen Frères. In 1972, German Hag, having failed to sell much coffee in Belgium under the "Decoffa" trademark, began to sell its coffee in Luxembourg under the "Hag" trademark. Van Zuylen Frères attempted to resist the importation of coffee from Germany under the Hag designation, and brought an infringement proceeding which led to the preliminary ruling in *Hag I*. In *Hag I*, the Court ruled that to "prohibit the marketing in a Member State of a product legally bearing a trademark in another Member State, for the sole reason that an identical trade mark having the same origin exists in the first state, is incompatible with the provisions providing for the free movement of goods."⁴

About fifteen years later, the Community Court faced the reverse situation in *Hag II*. In 1979, a Swiss company, Jacobs Suchard AG, which is the market leader in coffee products in Germany, succeeded to the interests of Van Zuylen Frères and restructured Belgian Hag as a wholly-owned subsidiary under the name S.A. CNL-Sucal.⁵ In 1985, S.A. CNL-Sucal began exporting coffee to Germany in packages which indicated its Belgian origin but which still used the trade name Hag.⁶ German Hag resisted the imports on the ground of trademark infringement, maintaining that "Kaffee Hag" had acquired the status of a famous brand in Germany, and that by virtue of a new manufacturing process its product was superior in quality to

1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II), 298 U.N.T.S. 3 (1958) [hereinafter EEC Treaty].

4. *Hag I*, [1974] E.C.R. at 744, [1974] 2 C.M.L.R. at 144.

5. For a statement of the facts, see the decision of the Hanseatische Oberlandesgericht (Court of Appeal, Hamburg) in *Re Hag Coffee*, Case 3 U 133/86, [1989] 3 C.M.L.R. 154 (1987).

6. *Id.* at 158.

the coffee supplied by Belgian Hag.⁷ The German courts upheld the position of German Hag, distinguishing *Hag I* on the facts and in consideration of the developments of Community law.⁸ The Bundesgerichtshof, the German Federal Supreme Court, referred the matter to the Community Court for a preliminary ruling.⁹

The Community Court based its ruling on the reasoning of the opinion of Advocate General Jacobs. The Advocate General proposed that the Court make the following answer to the Bundesgerichtshof:

Articles 30 to 36 of the EEC Treaty do not prevent an undertaking from relying on a trade mark of which it is the proprietor in a member-State in order to oppose imports from another member-State of similar goods bearing an identical or confusingly similar trade mark which was originally owned by the same undertaking but was subsequently acquired by an entirely unrelated undertaking without the consent of the first undertaking.¹⁰

II. THE DOCTRINES OF "EXHAUSTION" AND "COMMON ORIGIN"

Prior to the judgment in *Hag II*, the Court based its interpretation of articles 30 to 36 on two principles in order to prevent the use of trademarks to block imports. The first concept was the doctrine of exhaustion.¹¹ According to this doctrine,

7. The German government argued that German Hag, the original owner of the Hag trademark, should be allowed to export to Belgium in accordance with the judgment in *Hag I*, but that the holder of the Belgian trademark should not be allowed to export to Germany.

For the position of the German government, see René Joliet, *Trade Mark Law and the Free Movement of Goods: The Overruling of the Judgment in Hag I*, 22 IIC 303 (1991). On the *Hag II* judgment, see Peter Oliver, *Of Split Trade Marks and Common Market*, MOD. L. REV. 587 (1991).

8. Judgment of the Hanseatische Oberlandesgericht (Court of Appeal, Hamburg), [1988] GRUR Int. 256. For the English text of the decision, see *Re Hag Coffee*, [1989] 3 C.M.L.R. 154 (1987). For a short comment on the case, see Ann Marie De Die, *Re Hag Coffee: Now the National Courts Decide*, 4 EUR. INTELL. PROP. REV. 145 (1990).

9. Order of the Bundesgerichtshof of 24 November 1988, [1989] GRUR Int. 409. For the English text of the four questions submitted to the Community Court, see O.J. C 43/4 (1989).

10. *Hag II*, Case C-10/89, [1990] E.C.R. ___, [1990] 3 C.M.L.R. 571, 605.

11. The doctrine of exhaustion was formulated in 1971 in *Deutsche Grammophon Gesellschaft mbH v. Metro-SB-Großmärkte GmbH & Co. KG*, Case 78/70,

an intellectual property right cannot be invoked against the import of goods which have been put into circulation in another Member State by the holder himself, by a third party with the holder's consent, or by a person or undertaking which is legally or economically dependent upon the holder (the so-called "test of consent").¹² The second concept, known as the doctrine of common origin, was implied by the Court's judgment in *Hag I*.¹³ According to the doctrine of common origin, a trademark holder cannot restrain the import into a Member State of a product bearing the same trademark from another Member State when the trademarks are of common origin.¹⁴

The test of consent did not apply to situations of common origin. The doctrine of common origin refers to the separate ownership of identical trademarks in different Member States which had originally been held by a single owner.¹⁵ In situations of common origin, the reason for the separation of ownership is irrelevant, and may range from expropriation to any other form of public compulsion.¹⁶

[1971] E.C.R. 487, [1971] C.M.L.R. 631, and carried further in *Centrafarm BV & Adriaan De Peijper v. Winthrop BV*, Case 16/74, [1974] E.C.R. 1183, [1974] 2 C.M.L.R. 480.

12. See, e.g., Norbert Koch, *Article 30 and the Exercise of Industrial Property Rights to Block Imports*, 1986 *FORDHAM CORP. L. INST.* 605 (B. Hawk ed. 1987).

13. *Hag I* was only the second case in which the Community Court ruled on the relationship between intellectual property rights and the principle of the free movement of goods. In *Hag I* the Court mentioned common origin four times but neither formulated the principle nor explained its relevance. The doctrine of common origin was reiterated and restricted to marks of common origin in *Terrapin (Overseas) Ltd. v. Terranova Industrie C.A. Kapferer & Co.*, Case 119/75, [1976] E.C.R. 1039, [1976] 2 C.M.L.R. 482.

14. *Hag I*, Case 192/73, [1974] E.C.R. 731, 744, [1974] 2 C.M.L.R. 127, 144.

15. An explanation *ex post facto* of the doctrine was given in *Terrapin*, where the Community Court stated that

the proprietor of an industrial or commercial property right protected by the law of a Member State cannot rely on that law to prevent the importation of a product which has lawfully been marketed in another Member State by the proprietor himself or with his consent. It is the same when the right relied on is the result of the subdivision, either by voluntary act or as a result of public constraint, of a trade mark right which originally belonged to one and the same proprietor. In these cases the basic function of the trade mark to guarantee to consumers that the product has the same origin is already undermined by the subdivision of the original right.

Terrapin, [1976] E.C.R. at 1061, [1976] 2 C.M.L.R. at 505-06.

16. *Id.*

III. HAG I *v.* HAG II

In *Hag I*, the absence of consent did not render the concept of common origin inapplicable. The mere existence of a common origin of the trademark replaced the need for consent despite the rupture caused by the Belgian sequestration.¹⁷ The functions of trademarks, to indicate the origin of the goods and to prevent confusion in the mind of consumers about goods of different origin, were thus ignored. The Court pointed out that if the indication of origin on a product is useful, consumer confusion as to the origin of a product bearing the same trademark could be avoided "by means other than such as would affect the free movement of goods," because to hinder the free movement of goods would legitimate the isolation of national markets.¹⁸

As Advocate General Francis Jacobs indicated in *Hag II*, however, in the case of identical marks for identical products no amount of additional information can prevent the risk of consumer confusion.¹⁹ The purpose of an indication of origin is to link a product to the owner of the trademark, so that the owner becomes responsible for its quality and the uniformity of its characteristics.²⁰ The mere fact that the coffee's packaging indicates that it is made in Belgium or in Germany may be of no significance to consumers, who link certain perceptions of the quality of goods with a particular trademark. Where the holder has no more control of the characteristics of the product, and where there is no more linkage between the holders of two identical trademarks, the holder cannot ensure that all products sold under a particular mark possess similar quality. As a result, the holder lacks the power to influence the goodwill associated with a trademark.

In *Hag II*, the coffee sold by Belgian Hag and German Hag

17. In *Hag I* the Court did not explain why the mere fact that the trademarks were of common origin should be relevant, but simply stated that it is incompatible with the principle of the free movement of goods. *Hag I*, [1974] E.C.R. at 744, [1974] 2 C.M.L.R. at 144.

18. *Id.*

19. *Hag II*, Case C-10/89, [1990] E.C.R. —, —, [1990] 3 C.M.L.R. 571, 604.

20. The word "origin" in the context of trademark refers to the commercial origin of a product. The indication of origin given in a trademark is intended to identify the party responsible for the product. See W.R. CORNISH, *INTELLECTUAL PROPERTY: PATENTS, COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS* § 15 (2nd ed. 1989).

was of a different and better quality as a result of a new manufacturing procedure introduced in 1980.²¹ German Hag may display this additional information on its packages, but it may not force its competitors to do the same. After the forced sale, no commercial relations remained between the original German owner and the Belgian owners. In circumstances such as these, it is doubtful whether an indication of origin could adequately prevent consumer confusion. Consumers may not know that the coffee marketed under the same brand name is produced by two completely unaffiliated companies, thus leaving no guarantee as to the uniformity or quality of the product. In *Hag I*, the Court did not inquire as to whether there existed a disparity of quality that could confuse the public.²² In the conflict between the free movement of goods and consumer protection, the former interest prevailed.

IV. *THE COMMUNITY COURT'S REASONING IN HAG II*

The *Hag II* judgment, however, based its conclusion on grounds different from those in *Hag I*. Before replying to the request filed by the Bundesgerichtshof, the Community Court, accepting the Advocate General's recommendation, first stated that it was necessary to reconsider the doctrine of common origin in light of developments in the case law with regard to the relationship between intellectual property rights and the free movement of goods.²³ The Court noted that, according to its case law, article 36 allows derogations from the principle of free movement of goods only to the extent that such derogations are justified by the need to safeguard the specific subject matter of the trademark right.²⁴

21. See *supra* note 5.

22. The issue was raised by Van Zuylen Frères who pointed out that no links existed between the two undertakings and no control over the quality of the Belgian product could be exercised by German Hag. See *Hag I*, Case 192/73, [1974] E.C.R. 731, 737, [1974] 2 C.M.L.R. 127, 129. It is highly probable that the product marketed by German Hag and Belgian Hag was different. Even if the companies had used the same process of decaffeination, it may be presumed that they used different coffee beans. See Jacobs, *supra* note 2, at 652 n.14. Advocate General Jacobs noted that from the consumer's point of view the real problem was to ensure that an inferior product was not passed off under the same trademark or packaging, although this concern was not at issue in the case. *Id.* at 653.

23. *Hag II*, [1990] E.C.R. at ___, [1990] 3 C.M.L.R. at 607. This is the only reference that the Court makes to *Hag I*.

24. *Id.*

The Court noted that trademarks are an essential element of the system of undistorted competition that the EEC Treaty seeks to establish.²⁵ Competing firms should be able to attract and retain customers on the basis of the quality of their products and services.²⁶ This is possible through the use of distinctive signs which associate a trademark with a certain quality.²⁷ In order to play this role, trademarks should guarantee that the products bearing them are all made under the control of the holder who is responsible for the quality of the product.²⁸

Having established the limited circumstances in which article 36 permits derogation from its principles, and having described the role of trademarks, the Court then defined the specific subject matter and the essential function of trademarks.²⁹

The specific subject matter is the exclusive right of the trademark holder to place products bearing the trademark into circulation for the first time, and to prevent competitors wishing to take advantage of the goodwill and reputation of the trademark by selling products that illegally bear that trademark.³⁰ The specific subject matter includes both the nature of

25. *Id.* at __, [1990] C.M.L.R. at 607-08. One of the aims of the European Community set forth in Article 3 of the EEC Treaty is "the institution of a system ensuring that competition in the Common Market is not distorted." EEC Treaty, *supra* note 3, art. 3(f).

26. *Hag II*, [1990] E.C.R. __, __, [1990] 3 C.M.L.R. 571, 608.

27. *Id.*

28. *Id.* The Court, once again following the Advocate General's opinion, fully recognized the importance of trademarks under Community law and abandoned the view expressed in *Sirena S.r.l. v. Eda S.r.l.*, Case 40/70, [1971] E.C.R. 69, [1971] C.M.L.R. 260, where it affirmed that

the exercise of a trade-mark right is particularly apt to lead to a partitioning of markets, and thus to impair the free movement of goods between States which is essential to the Common Market. Moreover, a trade-mark right is distinguishable in this context from other rights of industrial and commercial property, inasmuch as the interests protected by the latter are usually more important, and merit a higher degree of protection, than the interests protected by an ordinary trade-mark.

Id. at 82, [1971] C.M.L.R. at 273.

29. *Hag II*, [1990] E.C.R. at __, [1990] 3 C.M.L.R. at 608.

30. *Id.* The specific subject matter of intellectual property rights was first mentioned in a copyright case, *Deutsche Grammophon Gesellschaft mbH v. Metro-SB-Großmärkte GmbH & Co. KG*, Case 78/70, [1971] E.C.R. 487, [1971] C.M.L.R. 631, and defined further in a trademark case, *Centrafarm BV & Adriaan De Peijper v. Winthrop BV*, Case 16/74, [1974] E.C.R. 1183, [1974] 2 C.M.L.R. 480. Its definition was repeated in later judgments in a similar way. See *Hoffmann-La Roche & Co. AG v. Centrafarm Vertriebsgesellschaft Pharmazeutischer Erzeugnisse mbH*, Case 102/

the right—that is, the right to restrain others—and its purpose, which is to protect the information provided by the trademark. This possibility of product differentiation is an incentive to provide goods of superior quality. In order to determine the exact scope of this exclusive right, it is necessary to take into account the essential function of trademarks, which is to guarantee the origin of the marked product to the consumers.³¹ A trademark can trigger in the minds of consumers an association between the origin of a good and its value.

The Court explained that the crucial factor in the present case was the absence of any element of consent on the part of German Hag to the activities of Belgian Hag.³² The Court, qualifying the element of consent, explained that consent is crucial because consumers otherwise cannot identify with certainty the origin of a product marked with an identical or confusingly similar trademark.³³ As a result, the poor quality of a product might be attributed to the owner of a trademark although he was not responsible for it.³⁴ In the Court's view, consent is crucial because it ensures the protection of consumers from fraud and confusion.³⁵ It is this concern for consumer protection that motivates the protection of the interest of the trademark owner.

The Court stated that its analysis was not affected by the fact that the trademark protected under national law and the similar trademark of the imported product both belonged originally to the same holder.³⁶ From the time of the expropriation of Belgian Hag, and despite their common origin, each trademark independently performed the role of guaranteeing that the product bearing the trademark came from a single source.³⁷

The Court, therefore, did not base its judgment on mere

77, [1978] E.C.R. 1139, [1978] 3 C.M.L.R. 217; *Centrafarm BV v. American Home Products Corp.*, Case 3/78, [1978] E.C.R. 1823, [1979] 1 C.M.L.R. 326.

31. *Hag II*, [1990] E.C.R. —, —, [1990] 3 C.M.L.R. 571, 608.

32. *Id.*

33. *Id.*

34. *Id.*

35. The Court followed the Advocate General's view that without trademark protection there would be little incentive for manufacturers to develop new products or to maintain the quality of existing ones. *Id.* at —, [1990] 3 C.M.L.R. at 583.

36. *Id.* at —, [1990] 3 C.M.L.R. at 609.

37. *Id.*

unqualified consent. If this had been the case, German Hag would have been able to prevent the access of Belgian Hag to the German market while retaining access to the Belgian market. According to *Hag II*, however, *each* trademark owner may object to the import into the Member State where he owns the trademark of products of the other owner, when the products bear the same trademark or may lead to confusion among consumers.³⁸

This concept is in line with the rationale of *Terrapin (Overseas) Ltd. v. Terranova Industrie C.A. Kapferer & Co.*,³⁹ where the Court held that when a risk of confusion between two trademarks exists, the holder of a trademark may rely on his trademark to prevent other persons from importing goods under the identical or confusingly similar trademark.⁴⁰

V. HAG II IN THE CONTEXT OF THE COURT'S CASE LAW

There are no clear indications as to whether the consent to marketing or the prevention of consumer confusion, dictated by the essential function of trademarks, will prevail in the judgments of the Court.

In *Hag II*, the application of the two tests led to the same result because the interests of the trademark holder and of the consumers coincided. This may not always be the case, as shown in cases concerning the repackaging of pharmaceutical products. In these cases, the interests of trademark holders are protected only if no repackaging is allowed, although the Community Court has permitted repackaging and relabelling under certain conditions in order to ensure adequate consumer protection.⁴¹ The Court seemed to invoke the essential function of trademarks when consent is inadequate, and to allow trademark holders to use their right to block imports when the protection of end users is involved.

The Court has frequently referred to the relevance of con-

38. *Id.*

39. Case 119/75, [1976] E.C.R. 1039, [1976] 2 C.M.L.R. 482.

40. *Id.* at 1062, [1976] 2 C.M.L.R. at 506.

41. See *Pfizer Inc. v. Eurim-Pharm GmbH*, Case 1/81, [1981] E.C.R. 2913, [1982] 1 C.M.L.R. 406; *Centrafarm BV v. American Home Products Corp.*, Case 3/78, [1978] E.C.R. 1823, [1979] 1 C.M.L.R. 326; *Hoffmann-La Roche & Co. AG v. Centrafarm Vertriebsgesellschaft Pharmazeutischer Erzeugnisse mbH*, Case 102/77, [1978] E.C.R. 1139, [1978] 3 C.M.L.R. 217.

sent in cases involving other intellectual property rights. Cases such as *Merck & Co. Inc. v. Stephar BV & Petrus Stephanus Exler*⁴² and *Pharmon BV v. Hoechst AG*⁴³ suggest that marketing—with or without consent—is the only element considered by the Court.

In *Merck*, the Court held that a Dutch patentee could not rely on its Dutch patent to block imports from another Member State, Italy, where the goods had been put into circulation by the patentee or with its consent, even though the absence of patent protection in Italy deprived Merck of the possibility of deriving monopoly profits from its sales there.⁴⁴

In contrast, in *Pharmon* the Court confirmed the right of a patent holder to prevent the importation and marketing of products which were legally manufactured and put into circulation in the exporting country on the basis of a compulsory license, because this occurred without the consent of the patent holder.⁴⁵ The Court held that the doctrine of consent does not apply in the context of compulsory licensing because there can be no element of consent in a compulsory licensing situation.⁴⁶ If the requirement of consent were waived as in the case of a compulsory license, the patent owner would be deprived “of his right to determine freely the conditions under which he markets his products.”⁴⁷

In patent cases, it is not consumer protection but the possibility of securing an adequate reward that is at stake. In more recent cases, the Court has emphasized the need for such rewards and incentives. In *Thetford Corp. v. Fiamma SpA*,⁴⁸ the Court stated that a U.K. law that permitted the granting of a patent if there had been no patent specification in the last fifty years did not constitute arbitrary discrimination or a disguised restriction of trade because it might encourage inventiveness in rediscovery. The Court recognized that the expectation of reward is the incentive to investment, and that it is necessary “to foster creative activity on the part of the inventors in the

42. Case 187/80, [1981] E.C.R. 2063, [1981] 3 C.M.L.R. 463.

43. Case 19/84, [1985] E.C.R. 2281, [1985] 3 C.M.L.R. 775.

44. *Merck*, [1981] E.C.R. at 2081-82, [1981] 3 C.M.L.R. at 481.

45. *Pharmon*, [1985] E.C.R. at 2298, [1985] 3 C.M.L.R. at 791.

46. *Id.*

47. *Id.*

48. Case 35/87, [1988] E.C.R. 3585, [1988] 3 C.M.L.R. 549.

interest of industry."⁴⁹

In the field of copyright, the Court has permitted the qualification and limitation of the role of consent to ensure an adequate return for the copyright holder.⁵⁰ The Court in *Warner Bros. & Metronome Video ApS v. Erik Viuff Christiansen*⁵¹ rejected the traditional analysis of exhaustion made by Advocate General Mancini.⁵² It ruled that the holder of the Danish copyright could prevent a Danish video shop from renting video cassettes bought in the United Kingdom, where at that time no copyright protection for such rentals existed.⁵³ The Danish law extending copyright protection to rentals came within article 36 of the EEC Treaty because of both the importance of the rental market and the need for the copyright holder to earn a sufficient reward.⁵⁴

CONCLUSION

In *Hag II*, the Court refers in paragraph 15 of the judgment to the absence of any element of consent as the determining factor of its decision, but in subsequent paragraphs gives prominence to the essential function of trademark. Moreover, the Court links consent to the essential function and role of trademarks in a system of undistorted competition.

Hag II suggests that the Court is more receptive to the protection of trademark rights. The opinion of Advocate General Jacobs, in describing the doctrine of common origin as unjustified on grounds of policy and the text of the EEC Treaty, criticized the Court's previous disappreciation of trademarks and recognized their necessity for the development of a market. *Hag II* is evidence of the Court's strong and renewed willingness to recognize the value and importance of trademarks.

49. *Id.* at 3607, [1988] 3 C.M.L.R. at 561.

50. See *EMI Electrola GmbH v. Patricia Im-und Export*, Case 341/87, [1989] E.C.R. 79, [1989] 2 C.M.L.R. 413; *Warner Bros. Inc. and Metronome Video ApS v. Erik Viuff Christiansen*, Case 158/86, [1988] E.C.R. 2605, [1990] 3 C.M.L.R. 684; *G. Basset v. Société des auteurs, compositeurs et éditeurs de musique (SACEM)*, Case 402/85, [1987] E.C.R. 1747, [1987] 3 C.M.L.R. 173; *S.A. Compagnie Générale pour la Diffusion de la Télévision, Coditel v. S.A. Ciné Vog Films*, Case 62/79, [1980] E.C.R. 881, [1981] 2 C.M.L.R. 362.

51. Case 158/68, [1988] E.C.R. 2605, [1990] 3 C.M.L.R. 684.

52. *Id.* at 2618, [1990] 3 C.M.L.R. at 689-90.

53. *Id.* at 2629, [1990] 3 C.M.L.R. at 699.

54. *Id.*, [1990] 3 C.M.L.R. at 698.

