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Press and Information Division

**PRESS RELEASE N° 26/05**

17 March 2005

Judgment of the Court of Justice in Case C-228/03

*The Gillette Company and Gillette Group Finland Oy v LA-Laboratories Ltd Oy*

**WITHOUT BEING THE OWNER OF A TRADE MARK, A THIRD PARTY MAY  
USE IT IN ORDER TO INDICATE THE INTENDED PURPOSE OF A PRODUCT  
WHICH IT MARKETS**

*Such use must, however, satisfy the criterion of necessity and fulfil the condition of “honest practices in industrial and commercial matters”*

Gillette obtained the registration in Finland of the trade marks “Gillette” and “Sensor”. Gillette Group Finland holds the exclusive right to use those trade marks in Finland, where it markets various razors, including those composed of a handle and replaceable blade, as well as such blades sold separately.

LA-Laboratories Ltd Oy also markets, in Finland, razors composed of a handle and replaceable blade, as well as blades sold separately. That company marketed blades under the trade mark “Parason Flexor”, affixing to their labelling a sticker with the words “All Parason Flexor and Gillette Sensor handles are compatible with this blade”.

The Gillette companies argued that the conduct of LA-Laboratories Ltd Oy constituted an infringement of the registered trade marks Gillette and Sensor. In their opinion, the practices of LA Laboratories created a connection in the mind of consumers between the products marketed by the latter and those of the Gillette companies, or gave the impression that that company was authorised, by virtue of a licence or for another reason, to use the Gillette and Sensor marks, which was not the case.

The Korkein oikeus (Finnish Supreme Court), hearing the dispute between the two companies at final instance, referred questions to the Court of Justice of the European Communities concerning the interpretation of the 1989 Community directive on trade marks,<sup>1</sup> particularly the provisions referring to limitations on the protection conferred by the trade mark.

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<sup>1</sup> First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1)

The Court referred to its case-law to the effect that the essential function of a trade mark is to guarantee the identity of origin of the marked goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin. Therefore, the trade mark has to offer a guarantee that all the goods or services bearing it have been manufactured or supplied under the control of a single undertaking which is responsible for their quality. In that context, limitation of the effects of the rights conferred upon a trade mark owner is designed to reconcile the fundamental interests of trade mark protection with those of free movement of goods and freedom to provide services in the common market.

The Court then noted that, according to the directive, a trade mark owner may not prohibit a third party from using the mark in trade where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided such use is made in accordance with honest practices in industrial or commercial matters.

Regarding the criterion of necessity, the Court held that that criterion requires the national court to verify whether **use of the trade mark is in practice the only means of providing the public with comprehensible and complete information as to the intended purpose of the product**. In making that assessment, the national court must in particular take account of the nature of the public for which the product marketed by the third party is intended.

Regarding the **condition of “honest use”**, the Court held this to be essentially the expression of a duty to act fairly in relation to the legitimate interests of the trade mark owner.

That condition is **not fulfilled** where, for example:

- the trade mark is used in such a manner as to give the impression that there is a commercial connection between the third party and the trade mark owner; or
- use of the trade mark affects its value by taking unfair advantage of its distinctive character or repute; or
- use of the trade mark entails its discrediting or denigration; or
- where the third party presents its product as an imitation or replica of the product bearing the trade mark of which it is not the owner.

**The fact that a third party uses a trade mark of which it is not the owner in order to indicate the intended purpose of its product does not necessarily mean that it is presenting that product as being of the same quality as, or having equivalent properties to, those of the product bearing the trade mark.** Nevertheless, the national court must verify whether the presentation is in accordance with honest practices in industrial and commercial matters.

Finally, the Court concludes that, where a third party that uses a trade mark of which it is not the owner markets not only a spare part or an accessory but also the product itself with which the spare part or accessory is intended to be used, the same conditions apply as regards the need to indicate the intended purpose of a product or service and as regards honest use.

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*Languages available: **Error! Reference source not found.**DE, EN, FR, PL*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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