European Union

“Rintisch”

First Council Directive 89/104/EEC of 21 December 1988 to Approximate the Laws of the Member States Relating to Trade Marks, Art. 10(1) and (2)(a) – *Bernhard Rintisch v. Klaus Eder*

**Decision of the European Court of Justice (Third Chamber)
25 October 2012 – Case No. C-553/11 P**

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1. Article 10(2)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the proprietor of a registered trade mark is not precluded from relying, in order to establish use of the trade mark for the purposes of that provision, on the fact that it is used in a form that differs from the form in which it was registered, without the differences between the two forms altering the distinctive character of that trade mark, even though that different form is itself registered as a trade mark.
2. Article 10(2)(a) of Directive 89/104 must be interpreted as precluding an interpretation of the national provision intended to transpose it into domestic law, whereby Article 10(2)(a) does not apply to a “defensive” trade mark that is registered only in order to secure or expand the protection of another registered trade mark that is registered in the form in which it is used.