European Union

“ÖKO-Test Verlag”

Decision of the European Court of Justice (Fifth Chamber)

11 April 2019 – Case No. C-690/17

*ÖKO-Test Verlag GmbH v. Dr. Rudolf Liebe Nachf.
GmbH & Co. KG*

Regulation (EC) No 207/2009, Art. 9(1); Directive
2008/95/EC, Arts. 5(1) and (2)

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Keywords Quality labels · Similar signs to different products · Unfair advantage of distinctive character or reputation · Rights afforded by a trade mark · Individual trade mark consisting of a quality label · Due cause of affixing

1. Article 9(1)(a) and (b) of Regulation (EC) No 207/2009 of 26 February 2009 on the [European Union] trade mark, and Article 5(1)(a) and (b) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that they do not entitle the proprietor of an individual trade mark consisting of a quality label to oppose the affixing, by a third party, of a sign identical with, or similar to, that mark to products that are neither identical with, nor similar to, the goods or services for which that mark is registered.
2. Article 9(1)(c) of Regulation No 207/2009 and Article 5(2) of Directive 2008/95 must be interpreted as meaning that they entitle the proprietor of an individual trade mark with a reputation, consisting of a quality label, to oppose the affixing, by a third party, of a sign identical with, or similar to, that mark to products that are neither identical with, nor similar to, the goods or services for which that mark is registered, provided that it is established that, by that affixing, the third party takes unfair advantage of the distinctive character or the reputation of the mark concerned or causes detriment to that distinctive character or reputation and provided that, in that case, the third party has not established the existence of a ‘due cause’, within the meaning of those provisions, in support of such affixing.

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