

INTELLECTUAL PROPERTY LAW IN  
THE EUROPEAN UNION



# INTELLECTUAL PROPERTY LAW IN THE EUROPEAN UNION

*Bryan Harris, MA (Oxon)*  
*Adjunct Professor of European Union Law,*  
*Franklin Pierce Law Center*  
*Concord, New Hampshire, USA*  
*Former Head of Intellectual Property Law Division,*  
*Commission of the European Communities*

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# Foreword

*William O. Hennessey*  
*Professor of Law*  
*Franklin Pierce Law Center*

*Intellectual Property Law in the European Union* by the late Professor Bryan Harris, head of the Intellectual Property Division, Commission of the European Communities, Brussels (1973–1983), is most timely. The EU is a work in progress, of consolidation and expansion. Ten new states in southern and eastern Europe signed the Treaty of Accession at Athens on 16 April 2003, and joined the fifteen Member States of the European Union on 1 May 2004, marking a new milestone in the re-recognition of the borders of European civilization.

But while the work of developing an intellectual property system for the European Union within the context of Union expansion is ongoing on numerous fronts, the core principles of the intellectual property law of the European Union were formulated and matured in the period of consolidation spanned by Professor Harris's distinguished career. Among many other achievements, Professor Harris was directly involved in drafting the Misleading Advertising Directive, the Trade Mark Directive, the Council Decision on Compulsory Licensing of Patents, and the Community Trade Mark Regulation. He also initiated the drafting of the European Commission's 1988 Green Paper on Copyright.

Professor Harris joined the Commission in 1973, the same year the United Kingdom (along with Denmark and Ireland) joined the Community. The development of intellectual property at the Community level, from the standpoint of primary and secondary legislation, of implementation, and of institutionalization, really had begun at just about that time. Long prior to the idea of direct regulation of intellectual property law from Brussels, the

European Court of Justice was addressing the question of intellectual property rights in the context of the EC Treaty's Article 30 (formerly Article 36) exception to the free movement of goods on the express condition that they not be used as a means of arbitrary discrimination or disguised restriction on trade. Landmark cases of the era include *Van Zuylen Freres v. Hag* ("Hag I," 1973) in the area of trademark law, *Centrafarm BV et al v. Sterling Drug, Inc.* (1974) in patent law, and *Coditel SA v. Cine Vog Films SA* (1979) in copyright law. Taking the framework for his book from that seminal period, Professor Harris brings us forward through the gradual and incremental stages of consolidation of the idea of intellectual property in the European "Common Market," guiding our way through the steady stream of directives and ultimately, Council regulations, which have come to reflect and shape a distinctively European approach to intellectual property law and its relation to competition law. The intellectual property law of the European Union is inseparable from the unique conditions of European economic competition. In some areas, such as the Community Trademark Regulation and the establishment of the European Trademark Office ("Office of Harmonization of the Internal Mark"), developments have clearly been a resounding success. Others have been less so. (Laggard adherence to the Copyright Directive and, *a fortiori*, the abject failure of Europe despite decades of effort at both the international and the Community level to develop a viable Community patent come to mind.) Economic priorities necessarily interact in subtle interplay with social, cultural, and political ones.

Professor Harris developed *Intellectual Property Law in the European Union* as a textbook and sourcebook for law students at the Franklin Pierce Law Center in the United States at a time when the teaching of intellectual property at all was absent from most U.S. law school curricula, and the teaching of European intellectual property law to American law students was practically unthinkable. But this was hardly happenstance. As my friend Professor Gerald Dworkin recently reminded me, Professor Harris was instrumental in the establishment of intellectual property education in the United Kingdom as a respectable—indeed, distinguished—calling. It was he who engaged the interest of engineer, entrepreneur, and aviation pioneer Herschel Smith to become (among many other endeavors) the most generous benefactor for the establishment of British intellectual property education and to bring into being the outstanding graduate intellectual property law program at Queen Mary College, London, as well as lectureships, scholarships and academic chairs. The predecessor of this book has given law students from around the world their first taste of international intellectual property law in the unique context of the European Union's

three principles of “solidarity, sustainability, and cultural diversity.” It has also served as a much broader platform for international and comparative intellectual property law as a curricular discipline in its own right. It now deserves a broader audience.

Concord, New Hampshire, USA  
9 May 2004



# Preface

This book is based on a course of lectures delivered annually for advanced post-graduate students at the Franklin Pierce Law Center, which is among the leading law schools in the United States, and indeed in the world, for the teaching of intellectual property law. The contributions of the students, many from Europe and other parts of the world, to discussions of the problems covered by the course have been exceptionally helpful in shaping the content and approach of the book. Their perceptive observations are reflected in two dissertations prepared at the end of the 1999 course and published on the Internet as part of the Conference on Competition and Intellectual Property Rights, organised by the Law Center in March and April of that year; as well as in one of the dissertations prepared at the end of the 2000 course and published on the Internet by the Patent, Trademark and Copy Research Foundation.

Before describing the strictly legal aspects of intellectual property rights in the European Union, it may be helpful to speak briefly about the European Union's origins and aims; an explanation may go some way to clarify both the general background to the development of this field of law and, more specifically, the terminology used when referring to the European Union and the European Communities.

After World War II, continental statesmen sought to create a mechanism by which the means of producing the main materials of war could be brought under joint control, thereby reducing greatly the likelihood that an individual state could challenge its neighbours by force of arms. If coal, iron, and steel production could be subject to a mechanism of this kind, a substantial step would be taken to this end. Accordingly, six European states concluded a Treaty in 1951 establishing the European Coal and Steel Community, and created what the Treaty called a "common market" in these products.

This was the first step in the process of economic integration in Western Europe. The second and third steps were more ambitious and were to a large extent dictated by two powerful considerations, which affected the interests of Germany and France in particular. Germany sought to regain political respectability and economic influence by having barriers to its growing industrial trade removed, while France was keen to extend the opportunities for exporting its agricultural products to the countries closest to it. Certainly other factors played their part: the other four states (Italy, Luxembourg, the Netherlands, and Belgium) also saw merits in the removal of trade barriers; and the Cold War added a degree of urgency to the need for cooperation in the West. Accordingly, Treaties concluded in 1957 extended the concept of the “common market” to a far wider range of products. The European Atomic Energy Community covered nuclear products; and the European Economic Community covered virtually all other industrial sectors, including agriculture.

Between 1958 and 1985 the three Communities developed at a sluggish pace. Many of the Member States’ leaders paid only lip service to the Communities’ objectives and drew the line at any serious attempts to limit national protectionism. However, in the mid-1980s, largely through the efforts of Jacques Delors, as President of the Commission of the European Communities, a new impetus was given to the removal of barriers to trade and a time-table set for the completion of the “internal market” by the end of 1992. (The difference between the “internal market” and the “common market” is explained in Chapter 1.) In addition, the first major amendment to the founding Treaties was effected by means of an important new Treaty known as the Single European Act, which came into force in 1987 and, by extending the range of political decisions on which majority votes replaced the need for unanimity among the Member States, speeded the process of legislation.

By the 1990s, European politicians were looking for a new role and for wider powers for the three Communities; and their plan lay in the creation of a European Union, founded on the Communities and covering a number of new sectors, including defence, foreign policy, and justice. The plan was embodied in the Treaty on European Union, which came into force in November, 1993. The Union did not supersede the Communities: it embraced them. This has resulted in an untidy structure, which it is nevertheless essential to understand at the outset of a study of any branch of European Union law. The untidiness was reflected in the clumsy way in which the provisions of the Treaty on European Union were grafted onto the provisions of earlier Treaties; but this was to some extent remedied in an amending Treaty, which came into force in May 1999.

At the time of writing, yet another Treaty has been signed; but, since it has not yet been ratified, it does not yet have the force of law and is therefore outside the scope of this book. It does, however, deserve a mention here, if only to refer to its principal aim. Over the years, the number of Member States has increased from the original six to the present fifteen; and there are some respects in which the growth has called for changes in the whole legal framework of the European Union. The Nice Treaty of 2001 is designed to provide for wider structural changes to accommodate the expected additions over the next few years to the number of Member States constituting the European Union. It remains to be seen whether it will be ratified in due course. If it is, the effects on intellectual property law are likely to be mainly in respect of legal instruments and procedures. As such, they will be covered, like existing constitutional law, in the book based on another course given at the Franklin Pierce Law Center over the past few years and entitled *The Constitutional Law of the European Union*: it has been published in its entirety on the Law Center's website and may be read and downloaded free of charge.

Bryan Harris  
June 2002





Memorial

# **Professor Bryan Harris Remembered: “Volez” to a Pierce Law Friend**

*by Jon Cavicchi\**

Bryan Harris, MA (Oxon), passed away recently in his beloved native England, after a brief illness. His wife, Mary, two sons and a daughter survive him. Bryan Harris had a long and distinguished career as an author, educator, barrister, diplomat, publisher and lobbyist. He was a consultant on European Union policies and laws to commercial and professional firms and associations. For almost three decades he was a Member of the Board of Trustees and Adjunct Professor of European Union Law at Pierce Law. Pierce Law President and Dean John Hutson summed up what many members of the Pierce Law community expressed to me as I prepared this tribute saying, “I think of Bryan mostly in single words . . . jovial, cheerful, humble, dignified, diplomatic, caring.” Dean Hutson shared the news that Professor Harris was to be recognized during the 2004 Commencement.

Professor Harris was a regular patron at the Pierce Law Intellectual Property Library where he diligently scoured professional journals for hours on end. I always looked forward to seeing his smiling face and our most interesting conversations. I was privileged over the last year to work with him as liaison to William S. Hein and Company, publisher of this treatise. It is my privilege to tell a bit of the story of the life and times of this member of the Pierce Law community. Part of this story is direct from the mouth of Professor Harris who was interviewed by Pierce Law alum Andrew D. Gathy for a faculty profile that appeared in the Fall 1998

*Germeshausen Newsletter*. Attorney Gathy graciously agreed to allow parts of his interview to be incorporated into this tribute.

Professor Harris began his story by telling of his birth on January 15, 1928 in Algeria, holding both British and French citizenship. Harris grew up in a time that saw great war and change in Europe. He served in the British Army and would have had to serve in the French military had he not given up his French citizenship. He attended Oxford to study history. From there he entered the prestigious Lincoln's Inn, one of the four Inns of Court, on scholarship. He studied law but admits that, having presented cases before various tribunals, he had no aspiration to practice as a full time advocate. He set his goals on teaching, writing and lobbying.

His energy went in the mastery of real property law. His hard work earned him a reputation as an expert on real property law. He entered the British civil service, hoping to join the Ministry of Land and Natural Resources, helping to draft new land laws. Instead he was assigned to the Department of Economic Affairs. At that time, the European Union (EU) or European Community was developing its governing laws. In the early 1970s, Professor Harris was tapped to join the European Union International Civil Service. He was, however, asked to apply his expertise toward intellectual property law, not real property.

Professor Harris took on the challenge just as he always did, head on. By 1973 he was appointed the head of the Intellectual Property Division in the Commission of the European Communities, in Brussels. He played a key role in creating the laws and processes that the EU would use to govern intellectual property questions. The EU was intended to harmonize the laws of the independent European countries to allow them to compete better in the world markets. Professor Harris drafted the European Community Trademark System. His Trademark System has proved to be a great success. It allowed for a single trademark for the entire EC. The system enabled the national trade barriers to be broken down and pushed the EC in the direction of the original ideals of the Union. Professor Harris contributed to the development of the copyright system as well. Much of Harris's groundwork in the trademark and copyright systems provided a foundation in the design law and applications in broadcasting and the current IP information super-highway in Europe.

Pierce Law founder Dr. Robert Rines was recently interviewed. He holds the early history of Pierce Law in his head and was friendly with Bryan Harris for almost three decades. His memoirs are forthcoming. Rines first approached Harris in the 1970s to "acquaint the American legal and academic communities with the fact that a common European intellectual property system was going to be a reality and to discuss the plans to divide

functions among European countries.” Harris represented the Commission in a two-day symposium at Pierce Law on EU law in intellectual property. That visit became an annual event that developed into mini-courses on EU intellectual property and constitutional development and led to his position as chairman of the Research Committee of the Patent, Trademark and Copyright Research Foundation.

Rines has many stories to tell about Harris, who he says was “loyal and thought a great deal of Pierce Law and its dreams.” Harris was appointed to the Pierce Law Board of Trustees at a time when Rines attempted to have Pierce Law added to the “inner circle of institutions” with a seat at the World Intellectual Property Organization (WIPO). All educational institutions holding WIPO seats had international faculties. Harris would become the first international faculty member “to add international flavor to Board of Law Center.” Harris stayed on the board until his death.

Harris met the challenge working with Rines on many international ventures to promote Pierce Law as a global IP training center. In addition to efforts at WIPO, Harris brought Pierce Law students and faculty to conduct a joint American Bar Association/British Legal Association convention in London. Harris also worked with Rines looking for academic exchanges. They met with the faculty at Oxford to arrange a conference on the concepts of mediation. The Oxford Law faculty found the idea of teaching mediation “avant garde.”

Harris remained close to Rines following the transition of the PTC Research Foundation from Pierce Law to the Academy of Applied Science. Harris acted in his role as diplomat enabling the elegant transition. He followed his dream of building the *PTC Internet Journal*, which he did until the time of his death. Harris was in discussions with WIPO to expand the *Journal* he had built.

Rines told some personal stories, mostly about restaurant adventures. Harris and Rines loved to dine out and discuss all types of subjects. Rines organized an annual get-together dinner party at the Carlton in London shortly before Harris’s death. That was to be the last dinner they were to share. Rines recalled one memorable and amusing meal. Harris took Rines and his late wife Carol to an upscale “epicurean club” in Brussels for lunch. Harris insisted they order a house specialty, pigeon aged in a wine sauce. The cooked birds had a strong odor the Rines couple could not tolerate. To the surprise of all, Harris devoured all three pigeons in one sitting—“Harris loved to eat.” Harris dined many times at Rines’s cottage in Loch Ness where they shared many philosophical debates over the Loch Ness monster.

Nothing but kind words have poured in from the Pierce Law community. Senior IP faculty member Tom Field recalls Harris's first visit to Pierce Law in the 1970s: "I recall that as the beginning of a long and cordial relationship. Pierce Law has, indeed, lost a good and important friend." Pierce Law global ambassador Professor Karl Jorda stated that "Harris was a giant; personable, quiet, modest, kind, and gracious." Jorda credits Harris for helping expand the Pierce Law curriculum to cover foreign, international and comparative IP and competition law. Jorda, agreeing with Rines, stated, "Harris was for some time our man in Europe helping to build a special relationship with WIPO, demonstrating that Pierce Law was more than a national law school." On a personal note, Jorda recalls that Harris knew of him as a beekeeper and subsequently presented him with a bottle of mead, which is a honey wine with origins obscured in the mists of time. Mead is considered by many to be the first alcoholic beverage created, predating both grape wine and beer. It was mentioned in Beowulf and known to the Greeks and Romans. Jorda "savored this thoughtful gift on many occasions."

Graduate Programs Director Professor Bill Hennessey has been foundational in building the Pierce Law global base of IP alumni and allies. He well appreciates Harris's contribution to the institution and students. He eloquently concluded, "Professor Bryan Harris was a warm, erudite, and engaged member of the Pierce Law intellectual property faculty community for more than two decades. During the many years of his participation in our academic deliberations and in his teaching at the Law Center, Professor Harris brought wit, humor, and élan to his explanations to our Pierce Law students about the vagaries of international cooperation, and additionally, a good deal of common sense counsel to our institutional direction. We will miss his candor, his kindness, his humanity, and his incapturable Britishness. Our debt of gratitude to him is immeasurable."

Professor Harris was an admired colleague of more than just the IP Faculty. Longtime Professor Ellen Musinsky stated, "He was always engaging about just about anything. Always genuinely interested in what I was doing. I think I was most surprised by Bryan's interest and knowledge about family matters. He was most interested and respectful about the subject, and recognized its importance in the general law." This was echoed by Rines, who concluded, "Harris was a scholar trained in the English tradition as a generalist. He explored the broad spectrum of human knowledge, the classics, science and technology. He was always eager to learn."

Harris loved to teach and some of the words he would assuredly find most gratifying come from former students. Student comments speak of

Harris's deep subject expertise and his great humanity. Aaron Silverstein sent an email stating, "I thought he was one of the kindest and most receptive professors I've had. He had an incredibly deep knowledge of international IP issues and was always willing to share that knowledge. This is a sad loss for the entire community." Nancy Dolhert sent a note, "Bryan Harris was a wonderful man and one of the nicest professors that I've ever had. He was so charming and very respectful of students. He spoke with a wonderful British accent, ending many sentences with 'Indeed!'—his enthusiasm for teaching was contagious! He invited the class out for a beer with him after the last class of the semester, his treat. I remember wishing more professors treated the students with such kindness. He will truly be missed, indeed!" Kirsten Koepsel concurred with Aaron and Nancy, adding, "Because of Professor Harris's knowledge of the history of the EU and his willingness to pass that on to others, I have a great appreciation of the work that was involved in creating the EU. His classes provided a good overview of what went into the creation, the regulations and directives, and the treaties that the participating countries have to follow. His knowledge was unsurpassed. In the classroom, he always had anecdotes about the historical activities and happenings of the EU and enjoyed passing them on to students." So many students expressed loss for the community and that he will be greatly missed.

Rines also expressed admiration for Harris's devotion to his students. Many times over the years, Rines publicly acknowledged the care with which Harris read student submissions, commenting with care and always picking up and stressing the positive. Rines stated, "Harris gave priority to his students, often declining dinner invitations to grade papers and exams."

A fitting way to end this tribute is with a story Harris told Gathy for the 1998 faculty profile. It was time for the lesson to begin, Bryan Harris was seated properly, the instructor commanded "*volez*" (take off). This was no ordinary lesson, of course. Bryan was in the cockpit of a trainer airplane on a runway in Belgium. The plane accelerated down the runway, which appeared to grow shorter and shorter while the poplar trees at the end appeared to grow larger and larger. This was Bryan's second lesson, the first of which was only on the theory of flight. He took hold of the controls and applied the theory (out of necessity) just enough to trim the tops of the trees. "He feared flying. He took up flying lessons to overcome that fear. It must be part of Professor Harris's nature to take on the new and unexplored unabashedly." So, the Pierce Law community says goodbye with thanks and admiration to a most loyal man who enriched the lives of so many over the decades. "*Volez,*" old friend, with hopes that you take on the new and unexplored unabashedly once again.

***The Publications of Bryan Harris include:***

Publisher and Editor, *Competition Law in the European Communities* (Fairford Press, monthly newsletter) and *PTC Internet Journal*. He was author of *The Law of the European Communities* (Supplement to Halsbury's Laws, Third Edition); *The Common Agricultural Policy* (in Halsbury's Laws, Fourth Edition); *Franchising in the European Community* (Longmans, October 1991); *The Constitutional Law of the European Union* (FPLC, 2002, sixth edition); *Intellectual Property Law in the European Union* (FPLC, 2002, fifth edition). Harris played a major part in drafting the Misleading Advertising Directive, the Trade Mark Directive, the Council Decision on Compulsory Licensing of Patents and the Community Trade Mark Regulation; and initiated the drafting of the Commission's Green Paper on Copyright. He was a frequent contributor to various legal and economic journals.

*\*Jon Cavicchi is Assistant Professor of Research and Intellectual Property Librarians. Contributing is Andrew D. Gathy, Pierce Law alum practicing with the Sierra Patent Group that assists clients worldwide in obtaining, licensing and enforcing their intellectual property rights.*

## Editorial Note

European Union law is changing rapidly each year. In 1999, the coming into force of the Treaty amending the Treaty on European Union changed many substantive provisions of all the Treaties, including the numbering of their provisions. The present book is revised annually. The law in this edition is stated as at 1st June, 2002.

Since European Union law is still relatively young, there are some respects in which it presents puzzling ambiguities and inconsistencies. Secondary legislation is eccentrically numbered; and even the names of the Institutions themselves are often recorded incorrectly in official documents. This book therefore imposes its own rules. The names of the Institutions are taken from the Treaties (see Chapter 10). Legislation is normally referred to with the year appearing last. Case-law is referred to simply by the official number and year of the case, which is quite enough to find the case on websites and in the other main sources of Community law. Articles of Treaties are referred to by their current numbers; but readers are warned that the old numbers may be mentioned in the text, for example, in quotations from court judgments antedating the renumbering. The standard abbreviations of the Treaties are used: for example, the Treaty establishing the European Community—the most frequently cited in the book—is “the EC Treaty.”

### Examples:

#### *Legislation*

Council Directive EEC/250/91 on the legal protection of computer programs. The Council is the body in this case responsible for adopting the legislation; in other cases, it may be “the European Parliament and the Council” or “the Commission”. The Directive is the type of legislative

instrument; in other cases, it may be “Regulation” or “Decision”. EEC refers to the European Economic Community; since November, 1993, this is “EC”; and other measures may begin with “ECSC” or “EAEC”. 250 is the number, 91 the year. This sequence is often varied in the official documents.

***Case-law***

Case 402/85, *Basset v SACEM*; Case T-107/94, *Kik v Council*; C-267/95, *Merck & Co v Primecrown Ltd*. These citations will find the cases, whether on the website, in textbooks, in the official reports or in other law reports. Where the case number is not preceded by a letter, this means that the case antedates the separation of the Court into a Court of First Instance and a final appellate Court. Since the separation, in 1988, the citations have begun either with a “T” for Tribunal, signifying the Court of First Instance, or a “C” for Court, signifying the Court of Justice itself.

***Articles of Treaties***

Article 308, EC Treaty. This is a shorter version of the following, which would indicate both the old numbering and the old abbreviation: Article 308, EC Treaty (formerly Article 235, EEC Treaty).



# Table of Cases

## JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES AND OF THE COURT OF FIRST INSTANCE

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C-44/98	<i>BASF AG v President of the German Patent Office</i> .	4n18
262/88	<i>Barber v Guardian Royal Exchange Insurance Group</i>	1n24
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C-427ff/93	<i>Bristol-Myers Squibb et al v Paranova</i> . . . . .	5n46
C-39/97	<i>Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc</i> . . . . .	5n44
3/78	<i>Centrafarm v American Home Products</i> . . . . .	5n3
15/74	<i>Centrafarm BV and de Peijper v Sterling Drug Inc</i> . . . . .	1n2, 2n12, 3n15, 4n10
16/74	<i>Centrafarm BV v Winthrop BV</i> . . . . .	2n13, 3n15, 4n12, 5n11
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62/79	<i>Coditel SA v Cine Vog Films SA (Coditel I)</i> . . . . .	3n19, 6n6, 6n9
262/81	<i>Coditel SA v Cine Vog Films SA (Coditel II)</i> . . . . .	6n10
C-326/92	<i>Phil Collins v Imtrat Handels GmbH</i> . . . . .	6n15
C-213/98	<i>Commission v Ireland</i> . . . . .	6n49

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55/80	<i>Dansk Supermarked AS v Imerco AS</i> . . . . .	5n83, 6n6
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51/75	<i>EMI v CBS</i> . . . . .	3n21, 5n11
C-293/98	<i>Entidad de Gestion de Derechos de los Productores Audiovisuales (EGEDA) v Hosteleria Asturiana SA (Hoasa)</i> . . . . .	6n54
56ff/64	<i>Etablissements Consten SA and Grundig-Verkaufs GmbH v Commission</i> . . . . .	5n6
C-392/97	<i>Farmitalia Carlo Erba Srl</i> . . . . .	4n26
T-91/99	<i>Ford Motor Company v OHIM</i> . . . . .	5n96
313/94	<i>Fratelli Graffione v Ditta Fransa</i> . . . . .	5n38, 5n51
55 and 57/80	<i>GEMA</i> , see <i>Musik-Vertrieb Membran</i>	
C-316/95	<i>Generics BV v Smith, Kline &amp; French Laboratories Ltd</i> . . . . .	4n7
192/73	<i>HAG I</i> , see <i>Van Zuylen</i>	
10/89	<i>HAG II</i> , see <i>CNL-Sucal</i>	
T-345/99	<i>Harbinger v OHIM</i> . . . . .	5n97
102/77	<i>Hoffmann-La Roche v Centrafarm</i> . . . . .	5n13
60/81	<i>IBM v Commission</i> . . . . .	6n45
144/81	<i>Keurkoop BV v Nancy Keane Gifts BV</i> . . . . .	2n26
T-107/94	<i>Kik v Council</i> . . . . .	5n81
C-349/95	<i>Loendersloot Internationale Expeditie v George Ballantine &amp; Son Ltd</i> . . . . .	5n47
C-241ff/91P	<i>Magill</i> , see <i>Radio Telefis Eireann</i>	
C-267f/95	<i>Merck v Primecrown</i> . . . . .	3n25, 4n14, 6n17
187/80	<i>Merck v Stephar</i> . . . . .	4n15
C-61/97	<i>Metronome Video et al v Laserdisken (Pedersen)</i> . . . . .	6n48
395/87	<i>Ministère Public v Tournier (SACEM II)</i> . . . . .	6n19
55 and 57/80	<i>Musik-Vertrieb Membran GmbH and K-Tel International v GEMA</i> . . . . .	3n19, 6n6, 6n18, 6n21

C-377/98	<i>Netherlands v Parliament and Council</i> . . . . .	4n34
258/78	<i>Nungesser and Eisler v Commission</i> . . . . .	4n31
C-337/95	<i>Parfums Christian Dior SA v Evora BV</i> . . . . .	5n48
24/67	<i>Parke, Davis v Probel</i> . . . . .	2n7, 4n8
1/81	<i>Pfizer v Eurimpharm</i> . . . . .	5n13
19/84	<i>Pharmon BV v Hoechst AG</i> . . . . .	4n15
352-95	<i>Phytheron International SA v Jean Bourdon SA</i> . . . .	5n49
C-383/98	<i>The Polo/Lauren Company v Dwidua Langgeng Pratana IFF</i> . . . . .	4n30
270/80	<i>Polydor v Harlequin Record Shops</i> . . . . .	5n13
T-122/99	<i>Procter &amp; Gamble v OHIM</i> . . . . .	5n98
C-241ff/91P	<i>Radio Telefis Eireann et al v Commission</i> . . . .	2n14, 3n8, 3n27, 3n29, 3n30, 6n8, 6n16, 6n20, 6n69
C-251/95	<i>Sabel BV v Puma AG</i> . . . . .	3n26, 5n16, 5n44
402/85	<i>SACEM I</i> , see <i>Basset</i>	
395/87	<i>SACEM II</i> , see <i>Ministère Public v Tournier</i>	
C-312/98	<i>Schutzverband gegen Unwesen in der Wirtschaft eV v Warsteiner Brauerei Hans Cramer GmbH &amp; Co KG</i> . . . . .	5n86
C-173/98	<i>Sebago Inc et al v GB-Unic SA</i> . . . . .	5n50
C-355/96	<i>Silhouette International Schmied GmbH &amp; Co KG v Hartlauer Handelsgesellschaft mbH</i> . . . . .	5n50
40/70	<i>Sirena Srl v Eda GmbH</i> . . . . .	2n8, 3n22, 5n7
60f/84	<i>Societe Cineteque v FNCF</i> . . . . .	6n48
C-350/92	<i>Spain v Council</i> . . . . .	4n21, 4n24
119/75	<i>Terrapin v Terranova</i> . . . . .	4n12, 5n10, 5n20
35/87	<i>Thetford Corporation v Fiamma SpA</i> . . . . .	4n16
192/73	<i>Van Zuylen Freres v Hag AG (HAG I)</i> . . . . .	2n11, 5n8
158/86	<i>Warner Brothers v Christiansen</i> . . . . .	3n24, 6n12, 6n47

## OPINIONS OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1/94	<i>Re World Trade Organisation</i> . . . . .	1n40
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## **JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN FREE TRADE ASSOCIATION**

E-2/97      *Mag Instruments Inc v California Trading Company  
Norway*

[Note. Many cases are now coming to the Court of First Instance by way of appeal from the Community Trade Mark Office (“OHIM”). Most of these are concerned with the question whether individual trade marks should or should not be registered. Some, however, raise points of principle about grounds for refusal. See the end of Chapter 5 for illustrations of the type of case concerned.]