

Post-Cassis Case-Law

- ◆ *Oebel* Case 155/80 [1981]
- ◆ *Blesgen* Case 75/81 [1982]
- ◆ *Oesthoek* Case 286/81 [1982]
- ◆ *Quietlynn* C-23/89 [1990]
- ◆ *Cf Buët* Case 382/87 [1989]

The Sunday trading saga

- ◆ *Torfaen v B&Q* Case 145/88 [1989]
- ◆ *Stoke on Trent & Norwich City v B&Q* C-169/91

Phase III

- ◆ ECJ retreats from lawfully marketed approach
- ◆ *Keck & Mithouard* Cases 367-68/91 [1993]

Cont'd (para 16 of *Keck's* ruling

"...the application to products from other member States of national provisions restricting or prohibiting certain selling arrangements is not such as to hinder, directly or indirectly, actually or potentially, trade between member States within the meaning of the *Dassonville* judgment provided that those provisions apply to all affected traders operating within the national territory and provided that they affect in the same manner, in law and in fact, the marketing of domestic products and of those from other Member States.

The key elements

- ◆ Indistinctly applicable measures - distinction:
 - Rules which relates to the goods themselves
 - Rules relating to selling arrangements

- ◆ National rules relating to selling arrangements will be regarded to fall outside Article 34 TFEU **provided** the conditions in paragraph 16 are met:
 - They apply to all relevant traders within the MS and,
 - They affect in the same manner, in law and in fact, the marketing of domestic and foreign (EU) products

Criticism of *Keck*

- ◆ AG Jacobs in *Leclerc-Siplec*: Too much emphasis on factual and legal equality at the expense of market access
- ◆ Overly formalistic?
- ◆ Subsequent cases try to clarify approach laid down in *Keck*:
Tankstation, Hunermund, Mars, Familiarpresse, KO v De Agostini, Gourmet

Examples

- ◆ Packaging & labelling (*Clinique, Mars*)
- ◆ Advertising (*Hunermund, Keckerc-Siplec*)
- ◆ Licensing (*Commission v Greece*)
- ◆ Sales methods (*Familiapress*)
- ◆ Working hours (*Punta casa*)

Is discrimination relevant?

- ◆ *De Agostini & TV-shop* Joined cases C-34-36/95 [1997]
- ◆ *Heimdienst* C-254/98 [2000]
- ◆ *Gourmet* C-405/98 [2001]
- ◆ *Karner* C-71/02 [2004]
- ◆ *Vassilopoulos* C-158/04 & C-159/04 [2006]

Article 29 EC Treaty (Art 35 FEU)

◆ Prohibition, as between MS, of QRs and MEQRs on EXPORTS

◆ *A different approach to Article 34 FEU*

Bouhelier (53/76) [1977]

Groenveld (15/79) [1979]

- *Lodewijk Gysbrechts (C-205/07)*

Case law on export barriers

- ◆ Indistinctly applicable measures will not breach Article 29 EC (Art 35 FEU)
 - Since only discriminatory measures will breach Art. 35 TFEU, the rule of reason cannot be invoked
- ◆ A shift towards a similar approach to Art 34 FEU *Lodewijk Gysbrechts (C-205/07)*

Next seminar

Expressed Treaty Derogations to the free Movement of Goods Rules ie Article 30 EC Treaty (Art 36 FEU) , particularly in the context of intellectual property rights