Case C-119/75 Terrapin [1976]

Facts: Terrapin, registered in England, manufactured prefabricated houses under the trade-mark "Terrapin". It applied to have this name registered in the German Patents Office. Terranova, which manufactured plaster for façades, was the proprietor of different trademarks registered at the German Patents Office with the words "Terra" and "Terranova", and opposed to this application. On appeal, Terrapin was ordered to restrain from using its name in Germany on the grounds of the risk of confusion. In connection with these proceedings, the Federal Court of Justice referred for a preliminary ruling a question on the interpretation of Articles 30 and 36 of the EEC Treaty with regards to trade-mark law.

Held: Quantitative restrictions on imports and all measures having equivalent effect are prohibited between Member States, but these provisions do not preclude prohibitions or restrictions on imports justified on grounds of the protection of industrial or commercial property. Whilst the Treaty does not affect the existence of rights recognized by the legislation of a Member State in matters of industrial and commercial property, the exercise of those rights may nevertheless be restricted by the prohibitions in the Treaty when the effect of invoking the territorial nature of national laws protecting industrial and commercial property is to legitimize the insulation of national markets without this partitioning being justified by the protection of a legitimate interest on the part of the proprietor of the trade-mark or business name. But it is compatible with the provisions of the EEC Treaty relating to the free movement of goods for an undertaking established in a Member State, by virtue of a right to a trade-mark and a right to a commercial name which are protected by the legislation of that State, to prevent the importation of products of an undertaking established in another Member State and bearing by virtue of the legislation of that State a name giving rise to confusion with the trade-mark and commercial name of the first undertaking, provided that there are no agreements restricting competition and no legal or economic ties between the undertakings and that their respective rights have arisen independently of one another. If in such a case the principle of the free movement of goods were to prevail over the protection given by the respective national laws, the specific objective of industrial and commercial property rights would be undermined.