

Case C-470/93 Mars [1995]

Facts: Mars lawfully produced and packaged ice-cream bars in France, in a uniform presentation for distribution throughout Europe, presented in wrappers marked “+10%” as part of a short publicity campaign during which the quantity of each product was increased by 10%. An association for combatting unfair competition brought proceedings in order to prevent this marking from being used in Germany, under the relevant national laws. In connection with these proceedings, the Regional Court referred for a preliminary ruling whether it was compatible with the principle of the free movement of goods to prohibit the marketing in a Member State of ice-cream snacks in a particular presentation which are produced in another Member State and lawfully marketed there in that same presentation.

Held: In the absence of harmonization of legislation, obstacles to the free movement of goods that are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods, are prohibited by Article 30 even if those rules apply without distinction to national and imported products. The prohibition in question hinders intra-Community trade and falls within the scope of Article 30 of the Treaty, as it may compel the importer to adjust the presentation of his products according to the place where they are to be marketed and to incur additional costs. Such obstacles to intra-Community trade must be accepted if justified in order to satisfy overriding requirements relating to consumer protection and fair trading, the provisions are proportionate to the objective pursued and that objective is incapable of being achieved by less restrictive measures. The association contends that the prohibition is justified on two legal grounds. Firstly, because the consumer assumes that the advantage indicated by the marking is granted without price increase, and therefore could be the victim of deception or, if the price did not increase, then the manufacturer would be imposing the price on retailers. However, Mars has not actually profited from the promotional campaign and there is no evidence that retailers have increased their prices, and the constraint imposed on the retailer is in fact favourable to the consumer. Secondly, the association contends that the marking gave the impression that the product had been increased by a quantity corresponding to the coloured part of the wrapping, which occupied considerably more than 10%, and this was misleading. However, reasonably circumspect consumers may be deemed to know that there is not necessarily a link between the size of publicly markings relating to an increase in a product's quantity and the size of that increase.