

## Giurisprudenza

### Dettagli del caso

ID nazionale: 20175

Stato membro: Italia

Nome comune: Grottoli c. Soc. CMA Sales and Production

Tipo di decisione: Altro

Data della decisione: 18/08/2006

Organo giurisdizionale: Corte di cassazione

Oggetto:

Attore:

Convenuto:

Parole chiave:

Articoli della direttiva

Distance Selling Directive, [Article 2](#), (2) Doorstep Selling Directive, [Article 2](#)

### Nota introduttiva

In this judgment the Italian Supreme Court has considered the notion of consumer. In particular, the Court held that only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption come under the provisions of the Italian Consumer Code. The specific protection sought to be afforded by those provisions is not applicable in the case of contracts for the purpose of trade or professional activity, even if that activity is only planned for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character.

### Fatti

The judgment of the Italian Supreme Court concerns the application of the provisions of the Italian Consumer Code to a contract concluded by the claimant for the purpose to establish a new professional activity. The issue specifically concerned the application to the contract at issue of the Art. 63 of the Italian Civil Code stating that "For any disputes arising out of the consumer contracts negotiated away from business premises, the District Court in the place of domicile or residence of a consumer, if in Italy, shall have binding jurisdiction". The Court held that the said provision is not applicable to the case because of the particular 'nature' of the agreement.

### Questione giuridica

#### Decisione

The judgment concerns the notion of 'consumer'. In particular, the Art. 3, paragraph 1, letter (a) defined the consumer or user as "any natural person who is acting for purposes which are outside his trade, business or profession".

According to settled case-law of Italian Courts, it follows from the wording and the function of that provision that it affects only a private final consumer, not engaged in trade or professional activities.

The Court clarifies that, in order to determine whether a person has the capacity of a consumer, reference must be made to the position of the person concerned in a particular contract, having regard to the nature and aim of that contract, and not to the subjective situation of the person concerned.

Consequently, only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption come under the provisions designed to protect the consumer as the party deemed to be the weaker party economically.

The protection concerning consumer contracts is not applicable in the case of contracts for the purpose of trade or professional activity, even if that activity is only planned for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character. As to the Court, this interpretation is consistent with the wording, the spirit and the aim of the provisions concerned to consider that the specific protective rules enshrined in them apply only to contracts concluded outside and independently of any trade or professional activity or purpose, whether present or future.

I note that the judgement of the Corte di cassazione follows the reasoning of the decision of the European Court of Justice, 3 July 1997, Case C-269/95.

Benincasa/Dentalkit [1997] ECR I-3767. In that case the ECJ concluded that, in determining the status of the purchaser, the court must assess the position of the purchaser having regard to the nature and aim of the contract, and not the subjective situation of the person concerned.

Testo integrale: [Testo integrale](#)

### Casi correlati

Nessun risultato disponibile

### Dottrina

Nessun risultato disponibile

### Risultato