Case law

Case Details

National ID: link

Member State: France

Common Name: link

Decision type: Other

Decision date: 01/02/2005

Court: Cour de Cassation (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, Article 1, 1. Injunctions Directive, Article 1, 1. Injunctions Directive, Annex I

Headnote

Consumer protection – Consumer Association – standing, locus standi – pre-emptive challenge for the removal of unfair contract terms – withdrawal from standard term contract – time of withdrawal - significance

Facts

Within the frame of the launch of its website, Avenir Télécom, a company specialised in the provision of pay-monthly mobile phone contracts, controlled by the company Net Up known as Log Global Services, offered an "e-pack" contract which included subscription to an internet access service linked to the sale of IT equipment.

The consumer association UFC Que Choisir exercised its powers to make a pre-emptive challenge against the distribution of the contract, sought damages and requested the court of first instance to declare certain terms unfair as well as constituting false advertising.

The decision of the Court of Appeal of Paris (Paris, 23 May 2003) rejected the contentions of the consumer association for want of cause.

Legal issue

Consumer associations have standing before the civil courts in the exercise of powers conferred upon them to make pre-emptive challenges to seek an injunction to restrain the use of or reliance upon unfair contract terms in every contract proffered to consumers or aimed at consumers.

However, the Court of Appeal was correct in its decision to hold the consumer association unable to have the litigious clauses struck out of all contracts already concluded after having stated that those particular standard terms were no longer being offered to consumers at the date at which the pre-emptive challenge was made.

Decision

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