

Case Details

Case Details

National ID	HD 103.004.155
Member State	Netherlands
Common Name	link
Decision type	Other
Decision date	13/05/2008
Court	Gerechtshof (Appellate court, Hertogenbosch)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Consumer Sales and Guarantees Directive, [Article 1, 1](#). Consumer Sales and Guarantees Directive, [Article 2, 1](#).

Headnote

By determining that a party acted in its professional capacity the following was taken into account: the advertisement for the sale of goods was placed under that party's business name, that party regularly placed such adverts online, the seller stated that there were many horses bred at the farm and some of them were for sale. It is not decisive whether the main professional activities of that party are directed at breeding or selling of horses.

Facts

In the end of 2003 the seller posted an advertisement on a Dutch online auction website (marktplaats.nl) under the name of his company. In the advertisement the seller mentioned a specific horse – Pubertha – he had for sale. The company is registered as specializing in breeding and training horses. Pubertha was examined by a vet before the sale took place. No illness or disease was found. Consumer bought Pubertha on the 8th of January 2004. On the 10th of February 2004 during an examination by a vet irregularities as to the horse's back were found. The horse was in pain when bending his legs. In the following months the horse was often incapable of being ridden and further examinations and treatments were conducted. The illness was suspected to be of a chronic kind, which would eventually lead to crippling of the horse. The consumer notified the seller of the non-conformity of the horse by letter on the 8th of March 2004 and demanded termination of the sale contract. The consumer demanded repayment of the sale price as well as damages for costs he had incurred.

Legal issue

Consumer claimed that the horse he bought was non-conforming his expectations, namely, not suitable for being ridden and for participating in the dressage competitions. Pursuant to art. 7:18BW implementing art. 2 of the Directive, there is a presumption that the non-conformity existed at the moment of delivery, since the defect materialized within 6 months from delivery. The seller tried to deny the professional character of his business, which would mean that the sale was not a consumer sale, pursuant to art. 7:5BW implementing art. 1 of the Directive. The seller claimed that his business activities are not directed at selling horses, but rather at breeding, raising and training them. The incidental sale of horses could not make the business a horse-selling one, claimed the seller. The court disagreed. The sole fact that the main activities of the seller are not directed at sale of horses may not be a

decisive factor in determining whether the seller was a professional one. What is important is that the sale of Pubertha took place within the business activities of the seller (the advertisement was issued under the seller's business name), that the seller regularly places such advertisements online, and he admits to selling a few of the horses he breeds and trains every year. Since the seller was a professional one, the sale was considered to be a consumer sale, to which presumption of art. 7:18BW was applicable.

Decision

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