

## Case law

### Case Details

**National ID:** link

**Member State:** Germany

**Common Name:** link

**Decision type:** Court decision, first degree

**Decision date:** 04/11/2015

**Court:** District Court of Dieburg

**Subject:**

**Plaintiff:** Unknown

**Defendant:** Unknown

**Keywords:** distance contracting, right of withdrawal

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 2, 1](#). Consumer Rights Directive, [Chapter 3, Article 9, 1](#). Consumer Rights Directive, [Chapter 3, Article 11](#)

Consumer Rights Directive, [Chapter 3, Article 11, 1](#). Consumer Rights Directive, [Chapter 3, Article 12](#) Consumer Rights Directive, [Chapter 3, Article 12, \(a\)](#)

Consumer Rights Directive, [Chapter 3, Article 12, \(b\)](#)

### Headnote

(1) The non-acceptance of a product is not a sufficient declaration of revocation. Rather, the revocation must be made expressly. It cannot be made implicitly, e.g. by refusal to accept the goods.

(2) The consumer has received a product when he is in a position to examine the goods. Physical possession is sufficient.

### Facts

On 7 August 2014, the plaintiff ordered from the defendant on the Internet platform eBay 480 cans of a refreshment drink at a price of € 45,50 plus shipping costs of € 35,00 (total € 80,50) . The plaintiff ordered the beverages to consume them in his residential community, where he lived with ten persons.

Upon completion of the order, the defendant used the eBay message system to send the plaintiff a "revocation instruction" with, among other things, the following contents: "The revocation period is fourteen days from the day on which you or a third party named by you who is not the carrier has or has had the goods."

The applicant paid the total sum of € 80.50 to the defendant's account. On 21 August 2014, the goods were delivered to the plaintiff by a carrier in a total of five packages. After the supplier had unloaded three of the five packages, the plaintiff refused to accept the remaining packages.

With an e-mail dated 19 October 2014, the plaintiff unsuccessfully requested that the defendant repay € 32.20 (2/5 of the total price of € 80.50). He argued that "I partly refused the contract and refused to accept two of the five packages".

### Legal issue

The rejection of the two packages by the plaintiff on 21.08.2014 does not represent a revocation within the meaning of § 355 para. 1 BGB. The plaintiff is not entitled to a payment of € 32.20 against the defendant because the (partial) revocation of the contract by e-mail was ineffective because the e-mail was sent after the revocation period of 14 days, which began when he physically received the packages and was in a position to examine the goods.

### Decision

(1) Does a refusal to accept purchased goods meet the requirements for revocation under § 355 para. 1 p. 2, p. 3 BGB?

(2) When has a consumer received a product such that the contract is concluded and the revocation period begins?

URL: <http://www.online-und-recht.de/urteile/Verweigerung-der-Warenannahme-keine-ausreichende-Widerrufserklaerung-Amtsgericht-Dieburg-20151104/>

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result

The appeal failed. The default judgment is maintained. The applicant must pay the costs of the appeal.