

Case Details

Case Details

National ID	ECLI:NL:GHSHE:2014:1138
Lidstaat	Nederland
Common Name	link
Decision type	Court decision in appeal
Decision date	22/04/2014
Gerecht	Gerechtshof 's-Hertogenbosch
Onderwerp	
Eiser	Proximedia Nederland B.V
Verweerder	Voormalig vennoot van Body Moving Sport & Beauty VOF
Trefwoorden	consumer, doorstep selling, judicial review, scope of the Directive

Directive Articles

Doorstep Selling Directive, [Article 1](#)

Headnote

- (1) The Door-to-Door Sales Act is not of consequential effect when the parties both cannot be defined as a private person.
- (2) Small business owners and general partnerships do not fall under the definition of private person or consumer.

Facts

Plaintiff is a business which facilitates websites for companies. Defendant operated a fitness center. Both companies have entered into contract for the creation of a website, the rent of a printer and a laptop. Correspondence followed a year later about the clarification of the invoices send by plaintiff. After that plaintiff blocked access to the website created and facilitated for defendant. Defendant in the proceedings of first instance claims (among other things) that art. 24 (1) Door-to-Door Sales Act is applicable and the contract is void from signing as they never received a copy of the contract. Defendant's claim is approved and plaintiff in second instance claims the Door-to-Door Sales Act is not applicable.

Legal issue

- (1) Is the Door-to-Door Sales Act of consequential effect when two businesses enter into contract?
- (2) Do small business owners and general partnerships fall under the definition of private person?

Uitspraak

The court considers certain the fact defendant has entered into an agreement within the scope of her business operations as the goods were being used for the business. Defendant cannot be defined as a private person in accordance with art. 1 (1) (d) Door-to-Door Sales Act. Only a consumer, not acting as part of a business, can fall under the protection of the Directive 85/577/EEC. The Dutch legislator has not opted to include the small business owners under the scope of the Act.

URL: <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHSHE:2014:1138>

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Result

The court reversed the first instance court's judgment.
