



TRADING LAW BULLETIN

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CONSUMER CREDIT

Employees. On 31st October 2004 the Consumer Credit (Advertisements) Regulations 2004 will come into force. On 31st May 2005 the Consumer (Disclosure of Information) Regulations 2004, the Consumer Credit (Early Settlement) Regulations 2004 and the Consumer Credit (Agreements) (Amendment) Regulations 2004 will come into force.

Multiple Agreements. In the County Court it has been held that an agreement, apparently above the monetary limit, should properly be broken down into three parts each of which was within the limit and therefore regulated. In addition to the cash loan, the advance included a payment protection plan and there was an element of refinancing (*Ocwen Limited v. Coxall*, 5th May 2004).

Amount of Credit. A regulated agreement provided for a cash advance together with arrangement fees. The total was documented as "total loan". It was held in a County Court decision that the amount of credit had not been stated for the purposes of Schedule 6 to the Consumer Credit (Agreements) Regulations 1983 (*Central Trust Plc v. Spurway*, 28th May 2004).

Credit Cards. In a case involving VAT the High Court has held that a contract of sale of goods when a card is used for a retail purchase is made after the customer has signed the credit card slip and the transaction has been accepted (*Debenhams v. Commissioners for Customs & Excise*, 29th June 2004).

Doorstep lending. A super complaint under the Enterprise Act 2002 has been submitted to the Office of Fair Trading in respect of doorstep lending.

Third Party Rights. Computers were supplied with an extended warranty and credit facilities were made available from the Claimant. Under Section 75 of the Consumer Credit Act 1974 the Claimant was jointly and severally liable to

compensate the customer for any breach of contract. The statutory indemnity was reinforced by an express indemnity and the supplier's obligations were guaranteed by an insurer. It was held that any claims by consumers would be subrogated under the Third Parties (Rights Against Insurers) Act 1930 (*First National Tricity Finance Limited v. Ellis*, 25th May 2004).

FOOD

Condemnation. A Notice of Detention of Food was served in relation to the packaging and labelling of meat. There was no allegation that the meat was diseased. The matter was brought before the Court under the Food Safety Act 1990 Section 9 and the Justice of the Peace agreed that the meat contravened the Food Safety requirements. However, she said that she had a discretion whether to condemn the meat. The Food Standards Agency appealed by way of Case Stated. It was held by the High Court that once there was a decision that the food contravened the Food Safety requirements, there was no room for discretion and the food had to be condemned (*R (on the application of the Food Standards Agency) v. Brent Justices* (2004) 168 JP 241).

Fishing. A prosecution was brought against the skipper of a fishing boat which was oversize for operating within a particular area. The vessel had been seen with its nets in the water. The nets had captured rocks and sand and the purpose of going into the area was to break open the nets. The Magistrates held that vessel was not fishing and the High Court agreed that none of the activities in respect of fishing which were prohibited by the relevant byelaw had been engaged in (*South Wales Sea Fisheries Committee v. Saunders* [2004] ACD 15).

Nutritional Food. Proceedings against Denmark in the ECJ succeeded because the authority's practice of only permitting vitamins and minerals to be added when there was a nutritional need was an obstacle to the free movement of goods prohibited by Article 28. The Article 30 exceptions

were to be interpreted strictly and there was no sufficient detailed assessment of national nutritional habits to determine the existence or extent of the risk which was said to exist (*Commission for the European Communities v. Denmark* [2003] 3 CMLR 29).

Publicity. The claimant food company attempted to stop a broadcast by seeking an injunction. The television company had commissioned a programme based on investigatory journalism into production practices at the factory. The Court refused the injunction because it was unlikely that the company could establish the publication should not be allowed within the Human Rights Act, the information was not confidential and the action was an action in defamation in disguise (*Tillery Valley Foods v. Channel 4 Television*, 11th May 2004).

PRICES

New Provisions. The Price Marking Order 2004 which revokes the order of 1999 comes into force on 22nd July 2004.

UNDER-AGE SALES

Intoxicating Liquor. In two separate cases the Magistrates' Court dismissed informations laid against companies which owned stores. The allegations were under Section 169(A)(1) of the Licensing Act 1964 in respect of under-age sales. Liquor licences were granted to named employees of the supermarkets and off-licences and not to companies. The High Court dismissed the appeal. The word "person" had to be read in a restrictive sense as meaning the person who actually made the sale. Reference was made to the Parliamentary debates because of the ambiguity. The legislation of 2000 which amended the 1964 Act had a limited extension and was not to reflect the methods of supermarket selling (*Haringay LBC v. Marks and Spencer Plc*, 5th May 2004).

UNFAIR TERMS

Dealing as a Consumer. At a trial relating to the sale of a defective car an issue arose as to whether the terms of the finance agreement which excluded the implied terms as to satisfactory quality and fitness for purpose had been subject to the Unfair Contract Terms Act 1977. The claimant company had acquired the car by hire-purchase and it was to be used by the Managing Director who was an enthusiast of high performance cars. The car was seen as a reward. The Judge held that

the car had been purchased by a consumer and the Court of Appeal upheld that decision (*Feldaroll Foundry Plc v. Hermes Leasing (London) Limited*, 11th May 2004).

TRADE MARKS

Sentencing. A sentence of 21 months imprisonment was reduced to 12 months for an individual found to be in possession of a large amount of equipment which could be used for the illegal copying of CDs, videos and DVDs. The offending was by no means at the upper end of the scale (*R v. Tassley* [2004] 1 Cr.App.R.(S)419).

HEALTH AND SAFETY

Correct Defendant. An information was laid against a specific NHS Trust. After that an order was made dissolving that trust and establishing a different NHS Trust. The order was further implemented by another order transferring "all the property rights and liabilities". A Crown Court Judge held that the Criminal Liability had been transferred. The Defendant Trust appealed to the Court of Appeal which upheld the appeal. There was no power under the legislation to transfer criminal liability from the old Trust to the new Trust. Further, there was nothing in the transfer order suggesting that it was intended (*R v. Pennine Acute Hospitals NHS Trust* [2004] 1 All ER 1324).

STREET TRADING

Single Articles. The Magistrates' Court dismissed an information of street trading without a licence. The Defendant had offered a single car for sale on the street and had no licence. The prosecution appealed to the High Court which held that the display for sale of a single item could give rise to street trading as the provisions were such as to contemplate a situation where just a single item was offered for sale. In addition, that person could be street trading whether or not the activity was carried on with regularity. The matter was remitted to the Magistrates for the hearing to continue (*Haringay LBC v. Michniewicz*, 14th June 2004).

ENTERPRISE ACT

Super Complaints. The bodies entitled to make super complaints under the Enterprise Act 2002 have been designated by the Enterprise Act 2002 (Bodies Designated to Make Super-Complaints) Order 2004.