



TRADING LAW BULLETIN

ISSUE NO. 52

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CONSUMER CREDIT

Limitation. A mortgagor claimed that the mortgagee's right to recover the property secured was statute-barred and the charge extinguished. The High Court held that the right of action accrued more than 12 years ago and there had been no acknowledgement of the mortgage so that it was extinguished by operation of Sections 15 and 17 of the Limitation Act 1980 (*Ashe v. National Westminster Bank Plc*, 13th March 2007).

Advertisements. The definition of the typical APR in the Advertisements Regulations was substituted by the Consumer Credit (Advertisements) (Amendment) Regulations 2007 which came into force on 6th April 2007.

Mortgage Fees. The Financial Services Authority has issued a statement on mortgage exit administration fees dated 26th January 2007.

Financial Ombudsman Scheme. The Financial Services and Markets Act 2000 (Ombudsman Scheme) (Consumer Credit Jurisdiction) Order 2007 specifies certain types of business for the purposes of the Scheme.

Consumer Credit Act 2006. The Consumer Credit Act 2006 (Commencement No.2 and Transitional Provisions and Savings) Order 2007 brings into force certain provisions of the 2006 Act on 31st January 2007 and 6th April 2007. The Order itself was amended by the Consumer Credit Act 2006 (Commencement No.2 and Transitional Provisions and Savings) (Amendment) Order 2007.

Delay. A mortgagor disputed the validity of a suspended possession order made 15 years before. It was claimed that the order had not been sealed and therefore not perfected. The Court of Appeal upheld the Judge's decision that it was far too late for the validity of the order to be challenged (*Abbey National Plc v. Miller*, 8th February 2007).

Store Cards. The Competition Commission have made an Order dated 26th July 2006 under the Enterprise Act 2002 (the "Store Cards Market Investigation Order") which commences on 1st May 2007. It provides for information on store card

statements, an APR warning, provisions regarding a direct debit facility, insurance provisions and the power of the OFT to require information and documents.

Freedom of Movement. The ECJ has held that a rule which required authorisation to provide consumer credit facilities to be refused if the provider did not have its central administration or a branch in the country in question was primarily a breach of article 49 EC; but a creditor based in a non-member State could not rely on those provisions (*Fidium Finanz AG v Bundesanstalt* [2007] All ER (EC) 239).

FOOD

Hygiene Offences. A supermarket was prosecuted in respect of alleged offences under the Food Safety (General Food Hygiene) Regulations 1995. The High Court rejected the argument that paragraph 3 of Chapter IX of Schedule 1 to the Regulations created a single offence (*Asda Stores Limited v. Wandsworth Borough Council* [2007] All ER (D) 373 (Feb)).

TRADE DESCRIPTIONS

Sentence. A sentence of 9 months imprisonment was imposed on a car dealer who removed 76,225 miles from car odometers (*R v. Patel*, Daily Telegraph, 30th January 2007).

UNFAIR TERMS

Arbitration. The ECJ had held that a national court could annul an arbitration agreement if it contained unfair terms (*Mostaza Claro v. Centro* [2007] BUSLR 60).

PROCEDURE

Amendment. The High Court held that a Magistrates' Court had wrongly allowed an amendment to an information relating to the keeping of a dog contrary to a disqualification order where the amendment was outside of the statutory six month time limit for laying the information and the amendment was contrary to the interests of justice as the defendant would have been subject to imprisonment and not simply the fine as he would have been under the unamended information (*Shaw v. DPP*, 25th January 2007).

NUISANCE

Noise. In an appeal against a Magistrates' decision

upholding a noise abatement notice the High Court held that the notice had not been properly served in accordance with the Environmental Protection Act 1990, Section 160 because it had been sent to an address which the Defendant asked to be used for correspondence and not to his proper address (*Butland v. Powys City Council*, 15th March 2007).

Noise. A local authority appealed against a decision of the Crown Court which allowed an appeal against conviction of failing to comply with a noise abatement notice. The High Court upheld the acquittal and said that courts were not obliged to follow the views of local authority officers as to whether noise amounted to a statutory nuisance (*Hackney LBC v. Rottenberg*, 9th February 2007).

Noise. On appeal from a Magistrates' noise abatement order the Crown Court made a new abatement order. This was based on a 40 decibel limit which itself was based on expert evidence. The High Court held that the Crown Court was entitled to reach that conclusion in order to abate a statutory nuisance that it found existed at 43 decibels (*Roper v. Tussauds Theme Parks Limited*, 23rd March 2007).

HOME INFORMATION PACKS

Regulations. Earlier regulations have been replaced by the Home Information Pack Regulations 2007.

SALE OF GOODS

Implied Term. The House of Lords held that there was an implied term in an agreement whereby agricultural machinery was inspected with a view to repair by the seller that the seller would inform the buyer of what the inspection had revealed and what repairs had been carried out (*J & H Ritchie Limited v. Lloyd Limited*, 7th March 2007).

DATA PROTECTION

Processing. The Court of Appeal reversed the decision of a Judge that a risk assessment which involved personal details amounted to the processing of data within the Data Protection Act 1998 (*Johnson v. Medical Defence Union Limited*, The Times, 10th April 2007).

HEALTH & SAFETY

Reasonable Practicability. The Advocate General delivered an opinion on 18th January 2007 proposing that the ECJ should not hold that the reasonably practicable provisions of the UK legislation failed to fulfil the obligations under Directive 89/391/EEC (*Commission v. United Kingdom*, 18th January 2007).

UNFAIR COMMERCIAL PRACTICES

Consultation. The Government has issued a

response to the consultation paper on implementing the Unfair Commercial Practices Directive.

LICENSING

Costs. In an appeal in respect of conditions imposed on a premises licence the Magistrates' Court awarded costs against the local authority. This was upheld by the High Court as it was within the discretion of the Magistrates whether to award costs in such cases (*Utilesford District Council v. English Heritage*, 22nd March 2007).

Fitness. In an application for judicial review in respect of a passenger carrying vehicle driver's licence, the High Court gave guidance as to the approach to judging fitness with regard to previous convictions and other factors (*R (Stace) v. Milton Keynes Magistrates' Court* (2007) 171 JP 1).

TIME LIMITS

Informations. The High Court upheld a Magistrates' Court decision that they had jurisdiction to hear an information relating to the felling of trees without a licence where proceedings had to be instituted within six months from the first discovery of the offence by the person taking the proceedings. It was held that the receipt of a fax amounted to the laying of the information and this was done within the relevant period.

BUSINESS NAMES

Companies. The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 which came into force on 1st January 2007 make amendments to the Companies Act 1985 with regard to trading disclosures.

UNDER-AGE SALES

Due Diligence. The High Court dismissed a prosecution appeal against a decision to uphold the due diligence defence in respect of an under-age alcohol sale. The Magistrates' opinion had been consistent with a need to look at the individual circumstances of the case (*Cambridgeshire CC v. Kama* (2007) 171 JP 194).

COPYRIGHT AND RECORDINGS

Enforcement. The provisions in Sections 107A and 198A of the Copyright, Designs and Patents Act 1968 relating to enforcement by local authorities are to be brought into force.