



# TRADING LAW BULLETIN

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## CONSUMER CREDIT

**Renewal of Credit Card.** A credit card issuer brought proceedings to claim monies due from the cardholder. The card had originally been issued in 1993 but in 2001 there were earlier legal proceedings in which the cardholder did not appear. The national court held that the card issuer had to show that the agreement had been properly renewed after the first year so that there had to be a written statement of the current APR. The European Court of Justice held that the interpretation was incorrect. Article 4 of the Council Directive 87/102 dealt with the situation when the agreement was made. It could not be implied into Article 4 that the information had to be supplied at the renewal date and Article 6 applied only to credit agreements and not a credit card facility (*Cofinoga Merignac SA v. Sachithanathan* [2004] 2 CMLR 14).

**New Regulations.** The Consumer Credit (Advertisements) Regulations 2004 come into force on 31st October 2004. The Consumer Credit (Early Settlement) Regulations 2004 come into force on 31st May 2005. These Regulations and Consumer Credit (Cancellation Notices and Copies of Documents) Regulations 1983 have been amended by the Consumer Credit (Miscellaneous Amendments) Regulations 2004. Those Miscellaneous Amendments Regulations also amend the Consumer Credit (Agreements) (Amendment) Regulations 2004.

**Limitations.** The last monthly payment under a mortgage was in July 1989. Legal proceedings to claim the shortfall on the mortgage were instituted over 12 years after that date but just within the 12 year period following the sale of the property after repossession. Summary Judgment was ordered against the borrower but the Court of Appeal held that the claim was time-barred. There was an implied covenant to pay the mortgage debt and that was a speciality and subject to the 12 year limitation period. The claim was also one secured by a mortgage on property within Section 20 of the Limitation Act 1980. However, the relevant date

was that on which there was a right to receive the money claimed in the action (*Wilkinson v. West Bromwich Building Society*, 30th July 2004).

**Dealing as consumer.** A company entered into a hire-purchase agreement for a sports car to be used by its Chairman and Managing Director. He found the car to be defective and returned it to the dealer. The agreement contained an exclusion clause relating to the quality of the car and the finance company argued that this was valid under Section 2(2) of the Unfair Contract Terms Act 1977 because the other party to the agreement was not dealing as a consumer. The Court of Appeal held that, being bound by a previous decision on the issue, the company was dealing as a consumer because it did not carry on the business of buying and selling vehicles. The Court also upheld the lower Court's decision that the hiring company had been entitled to reject the goods (*Feldarol Foundary plc v. Hermes Leasing (London) Ltd*, 11th May 2004).

## FOOD

**Labelling.** The European Commission brought proceedings for a declaration against Austria that it had not fulfilled its obligations regarding labelling because there was a general ban on health related information without prior authorisation. Therefore, even if the information was correct, food with the relevant labels on which had been lawfully manufactured and marketed in other Member States could not be sold. Austria said that the measures were justified for the protection of public health and for the protection of consumers against fraud. The European Court of Justice granted the declaration saying that these were not sufficient justifications for such a restrictive law which impinged on the free movement of goods. Other, less restrictive, methods could be invoked (*Commission of the European Communities v. Austria* (2004) 76 BMLR 1).

## SALE OF GOODS

**Acceptance of goods.** The Court of Appeal

upheld the decision of the County Court that consumers who had paid for the design, supply and installation of a kitchen could not reject it when the colouring did not match existing surfaces because of the time which had elapsed and the use to which the kitchen had been put (*Jones v. Gallagher*, 13th January 2004).

## **DISTANCE MARKETING**

**Regulations.** The Financial Services (Distance Marketing) Regulations 2004 come into force on 31st October 2004.

## **TRADEMARKS**

**Partnerships.** A local authority brought a prosecution against a partnership under Section 92 of the Trademarks Act 1994 and the relationship with the defence in Section 92(5) arose. The Court of Appeal held that this defence was available to whichever partner committed the actual act. Section 101 deals with proceedings against a partnership and there was also a special defence in Section 101(4) for any partner who was proved to have been ignorant of or who attempted to prevent the commission of the offence. It was held that these were procedural provisions. Where a partnership had ceased to exist at the time of the trial proceedings could continue against former partners under Section 101(4) but not against the firm. Consideration was also given to the admissibility of an expert witness relating to the subject matter of the prosecution which was bootleg discs (*R v. Wakefield & Purseglove* (2004) 168 JP 505).

## **FIREWORKS**

**New Regulations.** The Fireworks Regulations 2004 were made on 14th July 2004 and came into force, partly, on 7th August 2004 with Regulations 9 and 11 coming into force on 1st January 2005.

## **COSMETICS**

**New Regulations.** On 11th September 2004 the Cosmetic Products (Safety) Regulations 2004 came into force except for parts of Regulations 7 and 9 which come into force on 11th March 2005.

## **PROCEDURE**

**Summons.** The High Court has held that unless there is a defect in the summons which a local authority seeks to have issued there is no discretion on the part of the Court whether to issue it or not. Informations had been laid in respect of

clocking and the alteration of vehicle service books. The informations were under the Theft Act 1968, Section 15, and also under the Trade Descriptions Act 1968. The Court was of the view that the informations were bad for duplicity and that only one set of informations was necessary. The local authority applied for judicial review of the decision and the High Court held that a refusal to issue a summons was only justified where there was an abuse of process or impropriety. In any event, there was no duplicity in the case because there was a distinction between the allegations under the two Acts and there was a rationale in proceeding in that way because it enabled the informations to proceed in the alternative dependent upon the position of the defence. The prosecution under the Trade Descriptions Act 1968 only might not have allowed for an appropriate sentence whereas under the 1968 Theft Act proceedings could be pursued on the basis of dishonesty on the part of the defendant if this was appropriate. The Court had not been entitled to exercise its discretion not to issue the summons and a declaration was granted to this effect (*R (On the Application of LB Newham) v. Stratford Magistrates' Court*).

## **UNFAIR TERMS**

**ECJ Jurisdiction.** A National Court referred to the European Court of Justice the question of whether a provision in a contract whereby a consumer had to pay in advance for a car parking space which had yet to be built was an unfair term within Council Directive 93/13. The European Court said it could not rule on whether a particular term fell within Article 3(1) of the Directive but could only give an indication of what terms might be held to be unfair. Article 4 required that a finding of unfairness depended on investigating all the surrounding circumstances. The matter was therefore remitted to the National Court (*Freivurger Kommunalbauten GmbH Baugesellschaft & Co KG v. Hofstetter* [2004] 2 CMLR 13).