

**Case name (date):**  
**The “BKR” case (December 2016 - 2017)**

**KEYWORDS:**

*Competence of the Legal clinic; conformity of consumer goods (Directive 1999/44/CE); transnational dispute (Regulation (EC) n°593/2008)*

**FACTS:**

In this case, a user residing in France bought a piece of furniture a Luxembourgish reseller. After several months, the user noticed that shiny stains were appearing on the furniture. He notified these defects to the seller, who got in touch with the manufacturer, based in Germany. The manufacturer then offered to repair the furniture under the condition that the consumers paid the transporting costs. The consumers refused to pay the transportation costs.

After a while, they contacted the manufacturer again, which then replied that no repair was possible, as the answer came too late. The user is asking the Clinic if he could demand from the reseller or the trader a replacement for the furniture he bought.

**LEGAL ANALYSIS:**

Competence of the Clinic

The Clinic is competent only for cases in which the user can be considered a consumer and the other party can be defined as a trader, in accordance with article L.010-1 of the Luxembourgish Consumer Code. At least one of the Luxembourgish Consumer Code's provisions must be applicable to the case. Lastly, the overall amount at stake should not exceed a 5.000 EUR threshold.

The user bought a piece of furniture for his house and could be considered as acting for purposes un-related to his professional activity. He could be considered as a consumer. Both the reseller and the manufacturer could be considered as acting for purposes related to their business and could be considered as traders.

Transnational dispute

The consumer is residing in France. The Clinic, firstly, considered the applicable law. The EU regulation 593/2008, article 6 mentions that the applicable law can be the law of the country of residence of the consumer if the trader pursues or directs in any way his professional activities on the country of residence of the consumer. However, as the business did not direct its activities towards the consumer's country of residence, the article could not be applied.

The article 4 of the said regulation states that in case of a sale of goods, the contract shall be governed by the law of the country in which the seller has its habitual residence. The reseller was a company based in Luxembourg and, according to article 4, the applicable law was Luxembourgish Law, thus ensuring that the Clinic was competent to deal with the case.

Conformity of consumer goods

Under Luxembourgish Consumer law, article L. 212-3 of the Luxembourgish Consumer Code states that a trader must deliver goods in conformity with the sales contract and may be held liable of all non-conformities, whether he knew about them or not. As a piece of furniture is not supposed to have stains appearing by themselves, the Luxembourgish reseller could be held liable.

According to article L. 212-5 of the LCC and to the CJEU case *Quelle* (C-404/06), the “free of charge” aspect of the sale of consumer goods is a crucial and indisputable exigence for high level consumer protection.

Lastly, according to the same article of the LCC, consumers may choose between a repair or a re-placement. Should none of these options be reasonably envisioned, the consumer is entitled to a partial or total refund, based on whether he wants to keep the non-conform good or not.

Moreover, according to article 1641 of the Luxembourgish Civil Code regarding sales contracts, the seller will be held liable for all hidden defects making the good improper to the use the buyer was envisioning or make the use so difficult that the buyer would not have bought the good, had he known about it beforehand.

#### **LEGAL SOLUTION:**

Whether based on article L. 212-5 of the Luxembourgish Consumer Code, or 1641 of the Luxembourgish Civil Code, the Luxembourgish reseller could be held liable for any lack of conformity of hidden defect of the wooden furniture the consumer bought.

The company may not fight the legal argument, stating that the manufacturer would charge transportation fees, as the CJEU already clarified that the “free of charge” aspects for the 1999/44 Directive, on which the article L. 212-5 of the Luxembourgish Consumer Code is based is a crucial and indisputable element of consumer protection.

The consumer was, hence, entitled to ask for a replacement or a repair of the furniture.

#### **SOLUTION SUGGESTED BY THE CLINIC:**

The Clinic suggested that the consumer sent a registered letter to the Luxembourgish reseller mentioning the legal arguments to request a replacement or a repair while giving him a 15 days delay to favourably answer the request, after which a recourse to the Médiateur de la Consommation (the Luxembourg Mediator for Consumer disputes) would be done.

#### **SPECIFIC REMARKS:**

The answer was given in the framework of a present meeting with the consumer on the University premises.