

Case C-269/95

Francesco Benincasa

v

Dentalkit Srl

(Reference for a preliminary ruling
from the Oberlandesgericht München)

(Brussels Convention — Concept of consumer —
Agreement conferring jurisdiction)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 20 February 1997	I - 3769
Judgment of the Court (Sixth Chamber), 3 July 1997	I - 3788

Summary of the Judgment

1. *Convention on jurisdiction and the enforcement of judgments — Jurisdiction in respect of contracts concluded by consumers — Concept of 'consumer' — Plaintiff who has concluded a contract with a view to pursuing a trade or profession in the future — Excluded (Convention of 27 September 1968, Arts 13, first para., and 14, first para., as amended by the Accession Convention of 1978)*

2. *Convention on jurisdiction and the enforcement of judgments — Prorogation of jurisdiction — Agreement conferring jurisdiction — Scope of the exclusive jurisdiction of the court designated — Action to have the main agreement declared void — Included (Convention of 27 September 1968, Art. 17, first para.)*

1. In the context of the specific regime established by Article 13 et seq. of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, only contracts concluded for the purpose of satisfying an individual's own needs in terms of private consumption come under the provisions designed to protect the consumer as the party deemed to be the weaker party economically. On the other hand, the specific protection sought to be afforded by those provisions is unwarranted in the case of contracts for the purpose of trade or professional activity, even if that activity is only planned for the future, since the fact that an activity is in the nature of a future activity does not divest it in any way of its trade or professional character. It follows that the regime in question applies solely to contracts concluded outside and independently of any trade or professional activity or purpose, whether present or future, so that a plaintiff who has concluded a contract with a view to pursuing a trade or profession, not at the present time, but in the future may not be regarded as a consumer within the meaning of the first paragraph of Article 13 and the first paragraph of Article 14 of the Convention.
2. Article 17 of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments and civil and commercial matters sets out to designate, clearly and precisely, a court in a Contracting State which is to have exclusive jurisdiction in accordance with the consensus formed between the parties, which is to be expressed in accordance with the strict requirements as to form laid down therein. The legal certainty which that provision seeks to secure could easily be jeopardized if one party to the contract could frustrate that rule simply by claiming that the whole of the contract which contained the clause was void on grounds derived from the applicable substantive law. It follows that the court of a Contracting State which is designated in a jurisdiction clause validly concluded under the first paragraph of Article 17 also has exclusive jurisdiction where the action seeks in particular a declaration that the contract containing that clause is void. Furthermore, it is for the national court to determine which disputes fall within the scope of the clause conferring jurisdiction invoked before it and, consequently, to determine whether that clause also covers any dispute relating to the validity of the contract containing it.