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(Information)

COURT OF JUSTICE

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JUDGMENT OF THE COURT

(Full Court)

of 18 January 2005

in Case C-257/01: Commission of the European Communities v Council of the European Union ⁽¹⁾

(Regulations (EC) Nos 789/2001 and 790/2001 — Visa policy — Border checks and surveillance — Article 202 EC — Implementing powers reserved to the Council — Updating reserved to the Member States — Specific cases — Obligation to state reasons)

(2005/C 57/01)

(Language of the case: English)

JUDGMENT OF THE COURT

(Second Chamber)

of 20 January 2005

in Case C-464/01 (reference for a preliminary ruling from the Oberster Gerichtshof): Johann Gruber v Bay Wa AG ⁽¹⁾

(Brussels Convention — Article 13, first paragraph — Conditions for application — Definition of 'consumer contract' — Purchase of tiles by a farmer for roofing a farm building used partly for private and partly for business purposes)

(2005/C 57/02)

(Language of the case: German)

In Case C-257/01: application for annulment under Article 230 EC, brought on 3 July 2001, Commission of the European Communities (Agents: D. Maidani and C. O'Reilly) supported by Kingdom of the Netherlands (Agent: H.G. Sevenster) v Council of the European Union (Agents: E. Finnegan and I. Díez Parra) supported by: Kingdom of Spain, (Agent: R. Silva de Lapuerta) – the Court (Full Court), composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas and K. Lenaerts, Presidents of Chambers, C. Gulmann, J.-P. Puissochet, R. Schintgen (Rapporteur), N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges; P. Léger, Advocate General; R. Grass, Registrar, gave a judgment on 18 January 2005, in which it:

1. Dismisses the action;
2. Orders the Commission of the European Communities to pay the costs.

⁽¹⁾ OJ C 245 of 1.09.2001.

In Case C-464/01: reference for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, from the Oberster Gerichtshof (Austria), made by decision of 8 November 2001, received at the Court on 4 December 2001, in the proceedings between Johann Gruber and Bay Wa AG – the Court (Second Chamber), composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann, R. Schintgen (Rapporteur), G. Arestis and J. Klučka, Judges; F.G. Jacobs, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 20 January 2005, in which it has ruled:

The rules of jurisdiction laid down by the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, must be interpreted as follows:

- a person who concludes a contract for goods intended for purposes which are in part within and in part outside his trade or profession may not rely on the special rules of jurisdiction laid down in Articles 13 to 15 of the Convention, unless the trade or professional purpose is so limited as to be negligible in the overall context of the supply, the fact that the private element is predominant being irrelevant in that respect;
- it is for the court seised to decide whether the contract at issue was concluded in order to satisfy, to a non-negligible extent, needs of the business of the person concerned or whether, on the contrary, the trade or professional purpose was negligible;
- to that end, that court must take account of all the relevant factual evidence objectively contained in the file. On the other hand, it must not take account of facts or circumstances of which the other party to the contract may have been aware when the contract was concluded, unless the person who claims the capacity of consumer behaved in such a way as to give the other party to the contract the legitimate impression that he was acting for the purposes of his business.

⁽¹⁾ OJ C 56 of 02.03.2002.

JUDGMENT OF THE COURT

(Second Chamber)

of 20 January 2005

in Case C-27/02 (reference for a preliminary ruling by the Oberlandesgericht Innsbruck): Petra Engler v Janus Versand GmbH ⁽¹⁾

(Brussels Convention — Request for the interpretation of Article 5(1) and (3) and Article 13, first paragraph, point 3 — Entitlement of a consumer to whom misleading advertising has been sent to seek payment, in judicial proceedings, of the prize which he has ostensibly won — Classification — Action of a contractual nature covered by Article 13, first paragraph, point 3, or by Article 5(1) or in matters of tort, delict or quasi-delict by Article 5(3) — Conditions)

(2005/C 57/03)

(Language of the case: German)

the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters from the Oberlandesgericht Innsbruck (Austria), made by decision 14 January 2002, registered at the Court 31 January 2002, in the proceedings between Petra Engler and Janus Versand GmbH – the Court (Second Chamber) composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann and R. Schintgen (Rapporteur), Judges; F.G. Jacobs, Advocate General, M.-F. Contet, Principal Administrator, for the Registrar, gave a judgment on 20 January 2005, in which it ruled:

The rules of jurisdiction of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, by the Convention of 25 October 1982 on the Accession of the Hellenic Republic, by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic, and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden must be interpreted in the following way:

- legal proceedings by which a consumer seeks an order, under the law of the Contracting State in which he is domiciled, that a mail order company established in another Contracting State award a prize ostensibly won by him is contractual in nature for the purpose of Article 5(1) of that convention, provided that, first, that company, with the intention of inducing the consumer to enter a contract, addresses to him in person a letter of such a kind as to give the impression that a prize will be awarded to him if he returns the ‘payment notice’ attached to the letter and, second, he accepts the conditions laid down by the vendor and does in fact claim payment of the prize announced;

- on the other hand, even though the letter also contains a catalogue advertising goods for that company and a request for a ‘trial without obligation’, the fact that the award of the prize does not depend on an order for goods and that the consumer has not, in fact, placed such an order has no bearing on that interpretation.

⁽¹⁾ OJ C 109 of 04.05.2002.