



TRADING LAW BULLETIN

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CONSUMER CREDIT

Amount of credit. The Supreme Court have dismissed an appeal by the borrower who argued that the total amount of the loan should have included the amount for the broker's fee on which interest was charged. Both the fee and the interest on it was part of the total charge for credit and could not therefore be treated as credit (*Southern Pacific v. Walker* [2010] UKSC 32).

Unfair relationships. A "log book loan" was challenged as an unfair relationship in the County Court. The finding of unfairness was successfully appealed to the High Court (*Shaw v. Nine Regions Limited* [2009] EWHC 3514(QB)).

Title. The High Court allowed an appeal from a District Judge in respect of a "log book loan". The Claimant entered into a hire purchase transaction with a customer who very quickly borrowed money from the Defendant and gave a bill of sale in respect of the car which transferred title in the car to the Defendant. The vehicle was re-possessed by the Defendant and sold. The High Court held that the Hire Purchase Act 1964 was not engaged because the disposition to the Defendant was not to it as a private purchaser. It was held that one of the purposes of acquiring title by the Defendant was to sell the vehicle in the event of default (*Welcome Financial Services v. Nine Regions Limited* [2010] EWHC B3 (Mercantile)).

Payment protection. The Competition Commission has published a consultation in respect of its provisional decision on remedies in the PPI market.

Debt sale. An interim enforcement order has been obtained by Birmingham Trading Standards against a debt sale company trading as Credit Card Killer and its owners.

FSA fine. The Financial Services Authority have fined a mortgage company £1.2 million in respect of charging excess fees to customers. There is also a requirement to pay compensation.

Loan sharking. The OFT has set up a campaign to warn people of the dangers of loan sharking (OFT Press release 52/10).

High-cost credit. The OFT has published a final report of its review of the high-cost credit sector (OFT Press release 63/10).

Hiring. The Claimant was an equipment leasing company which hired equipment to a tenant of the Defendant. The High Court held that the equipment lessor's rights had been extinguished by the termination of the lease and its failure to remove the equipment within the period described by a waiver (*Michael Gerson (Leasing) Limited v. Greatsunny Limited*, 17th June 2010).

Guarantees. Guarantors argued that a guarantee should be set aside because of a failure to disclose investigations in Switzerland in respect of money laundering. It was held that the obligation of disclosure to a prospective guarantor was not limited to features of the contract. However, there was no obligation of disclosure in respect of something that the guarantor could reasonably be expected to know (*North Shore Ventures Limited v. Anstead Holdings Inc* [2010] EWHC 1485 (Ch)).

Undue influence. Money was advanced to annul a bankruptcy and was secured by a second charge. Attempts to find a re-mortgage failed and the Judge held that the charge had been entered into as a result of undue influence. The decision was upheld by the Court of Appeal (*Annulment Funding Co Ltd v. Cowey* [2010] EWCA Civ 711).

FOOD

Labelling. The proposed "traffic light" food labelling system has been rejected by the European Parliament.

Malicious falsehood. The Court of Appeal held that the "single meaning rule" in libel was not to be imported into malicious falsehood. The case arose because of the labelling of food by a supermarket which was said to be a malicious falsehood in respect of other foodstuffs (*Ajinomoto Sweeteners Europe SAS v. Asda Stores Limited* [2010] EWCA Civ 609).

Approval of establishments. An application for judicial review was refused in respect of a decision of a local authority not to recognise an approval

number and a decision of a Magistrates' Court to grant on a condemnation order (*R (Allan Rich Seafoods Limited) v. West Lindsey District Council* [2010] EWHC 1232 (Admin)).

PACKAGE TRAVEL

Licensing. The Administrative Court has considered the Package Travel Etc. Regulations 1992 on an appeal by the prosecution against an acquittal in the Magistrates' Court. Consideration was given to a situation where services were sold separately but at the same time (*Civil Aviation Authority v. Travel Republic Limited* [2010] EWHC 1151 (Admin)).

Holiday claims. The Court of Appeal ruled on an assessment of damage to be awarded as compensation for a ruined holiday taken on a maiden world voyage of a ship (*Milner v. Carnival plc* [2010] EWCA Civ 389).

Guidance. Guidance has been issued on the Package Travel Etc. Regulations 1992 where unusual and unforeseeable circumstances occurred and disrupt package travel and package holidays.

VEHICLE LICENSING

Transport Tribunal. The Court of Appeal has ruled that the function of the Tribunal was not the same as an appeal to the Crown Court. It upheld a period of disqualification having regard to maintenance shortcomings and a failure to comply with undertakings (*Bradley Fold Travel Limited v. Secretary of State* [2010] EWCA Civ 695).

ADVERTISING

Vehicles. Advertising on a vehicle was not exempt from the need for planning consent if the principal use at the time was the display of advertising (*Tile Wise Limited v. South Somerset District Council*, 17th June 2010).

FIRE PRECAUTIONS

Sentence. The Court of appeal upheld a fine of £400,000 in respect of breaches of the Fire Safety Order. There had been a serious fire at a fashion retailer's Oxford Street store. No-one was hurt but the magnitude of the risk of the breaches was sufficient to justify the fine (*New Look Retailers Limited v. London Fire and Emergency Planning Authority* [2010] EWCA Crim 1268).

HEALTH AND SAFETY

Emergency workers. It has been announced that police officers and other emergency workers will be excluded from health and safety law (The Times, 19th June 2010).

UNFAIR COMMERCIAL PRACTICES

Combined offers. The European Court of Justice held that Belgian laws which outlawed combined offers in all circumstances exceeded the requirements of Directive 2005/29. Combined offers constituted commercial acts and therefore fell within the Directive (*VTB-VAB v. Total Belgium* [2010] All ER (EC) 694).

AIR TRANSPORT

Compensation. The European Court of Justice gave guidance on the interpretation of Regulation 261/2004 in respect of flights which were delayed or cancelled (*Sturgeon v. Condor Lflugdienst* [2010] All ER (EC)660).

VIDEO RECORDINGS

Convictions. The Court of Appeal rejected applications to quash convictions under the Video Recordings Act 1984 despite the Act not being valid having regard to non-notification under Directive 83/189 (*R v. Budimir*, 29th June 2010).

PRODUCT LIABILITY

Limitations. The ECJ ruled on the issue of limitations with regard to allegedly defective products (*Aventis Pasteur SA v. OB* [2010] All ER (EC) 522).

CONSUMER PROTECTION

OFT paper. The OFT have published a Consumer Law and Business Practice on Drivers of Compliance and Non-Compliance (OFT 125).

UNFAIR TERMS

Sale of land. The High Court ruled that an entire agreement clause was not an unfair term in respect of a contract for the sale of a flat (*Shaftesbury House (Developments) Limited v. Lee*, 18th June 2010).

CIVIL SANCTIONS

Environmental Civil Sanctions. The Environmental Civil Sanctions (England) Order 2010 came into force on 6th April 2010.

MEDICINES

Supply. An offence of supplying a medical product with a false or misleading label could only be committed by a person carrying on the business and that was not an employee or a locum (*R v. Lee* [2010] EWCA Crim 1404).