

Rules of public order of European Union law and rule of conflict of laws: determination of the law applicable to the dispute and application on its own motion of the mandatory provisions of Article 6 of the “Rome II” Regulation of 11 July 2007

28/10/2021



Ruling no 421 of 26 May 2021 (19-15.102) - Cour de cassation (Court of Cassation) - First Civil Chamber - ECLI:FR:CCAS:2021:C100421

Quashing



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Appellant(s) : Mienta France, société par actions simplifiée (simplified joint-stock company) and others

Respondent(s) : Groupe SEB-Moulinex, société par actions simplifiée unipersonnelle (simplified single shareholder company) and others

Partial withdrawal

I. Mienta France, Michel-Miroite-Gorins, in its capacity as judicial administrator, and Fides, in its capacity as judicial representative for the judicial reorganisation of Mienta France, are given notice that their appeal has been withdrawn insofar as it is directed against Blendex Egypt, Bouri Center, Bouri Général Trading, International Polytrade, Misr Intercommerce and Nile Intercommerce.

Facts and procedure

II. According to the ruling under appeal (Paris, 16 May 2018), by an agreement of 18 November 2002, Groupe SEB-Moulinex and SEB (SEB group), having taken over the assets of Moulinex, defined the framework within which the commercial relationship with the Egyptian companies, Misr Intercommerce (Intercommerce) and Blendex Egypt (Blendex), subsidiaries of the Bouri group, both of which were active in the trading, manufacturing, importing and distributing of domestic and household electrical appliances, would continue. Groupe SEB-Moulinex granted Intercommerce the exclusive representation and distribution of Moulinex trademark finished household electrical appliances in Egypt, and Blendex, for the same territory, firstly an exclusive licence to use the international Moulinex trademarks in the same territory, secondly a licence to manufacture certain products, and third a loan of moulds and the supply of products and components needed to manufacture Moulinex-trademark appliances.

III. A dispute having arisen between the parties at the time of the termination of their contractual relations, the SEB group summoned the companies Intercommerce and Blendex for liability for the sudden interruption of established commercial relations.

IV. The SEB group gave third-party notice to Mienta France, accusing it of manufacturing itself, and having Blendex manufacture, under the Mienta trademark, small electrical appliances that were similar to its own products, with the purpose or effect of creating harmful confusion in the mind of the public about its own products, and of marketing them on the Egyptian market, either by itself, or in the 'Bouri Centers', or through the intermediary of Intercommerce.

V. Citing unfair competition and parasitism, the SEB group requested, on the basis of Article 1382, now 1240, of the Civil Code, that Mienta France, Intercommerce and Bendex be ordered in solidum to pay damages and to cease manufacturing and marketing the disputed products.

VI. Mienta France was declared in receivership by judgement of 23 May 2019, with Michel-Miroite-Gorins appointed as court-appointed administrator and Fides as judicial representative.

Reviewing pleas

On the first plea, in its second and third branches, the third and fourth pleas in the main appeal, the first plea, the second plea, in its second and third branches, the fourth and fifth pleas in the cross-appeals, appended hereafter

7. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to rule by a specially reasoned decision on these pleas, which are clearly not of a nature to lead to the quashing.

But on the plea raised by the Court of its own motion

8. After notice given to the parties in accordance with Article 1015 of the Civil Procedure Code, Article 620, paragraph 2 of the same Code shall be applied.

Having regard to Article 6 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ("Rome II"), Article 12 of the Civil Procedure Code and the principles of primacy and effectiveness of European Union law:

9. The first of these regulations states:

"1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.

2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.

(...)

4. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14."

10. It follows from the second of these texts and from the above-mentioned principles that if the Court is not obliged, except in the case of specific rules, to change the legal basis of the claims, it is obliged, when the facts before it so justify, to apply the rules of public order resulting from European Union law, such as a rule of conflict of laws when it is forbidden to derogate from it, even if the parties have not invoked them.

11. In ordering Mienta France, Blendex and Intercommerce to pay damages to the SEB group under French law, the ruling held that these companies, by deliberately creating confusion between Mienta- and Moulinex-trademark products through the range and presentation of their products, in order to take advantage of Moulinex's reputation in Egypt, and by using Moulinex's moulds and manufacturing techniques for this purpose, in order to take advantage of the latter's reputation in Egypt, committed acts of parasitism and unfair competition.

12. In so ruling, without implementing on its own motion, as it was required to do, the mandatory provisions of Article 6 of the 'Rome II' regulation to determine the law applicable to the dispute, the cour d'appel (Court of Appeal) infringed the above-mentioned regulations and principles.

ON THESE GROUNDS, and without having to rule on the other objections, the Court:

QUASHES AND SETS ASIDE, all provisions, of the ruling delivered on 16 May 2018, between the parties, by the cour d'appel (Court of Appeal) of Paris;

Returns the case and the parties to the status existing prior to the said ruling and refers them to the cour d'appel (Court of Appeal) of Paris, otherwise composed;

President: Ms Batut
Reporting Judge: Ms Guihal
Advocate-General: Mr Sassoust
Lawyer(s): SCP Thouvenin, Coudray et Grévy - SCP Alain Bénabent

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