

ccNSO Legal Session

Helsinki, 29 June 2016

Court Assessment of .be's Terms & Conditions - More Than a Play on Words?

Case spontin.be

- Spontin.be registered by Mr. X on 6/6/2001
- Spontin = well known local TM of Spontin SA (producer of syrups) + also a place name (village of Spontin) in the south of Belgium
- Spontin SA launches ADR case against Mr. X and obtains transfer of the name on 18/2/2010
- DNS Belgium reimburses Spontin SA for the admin costs of the ADR and charges them to Mr. X
- Important note: ADR was already part of T&C in 2000, reimbursement of costs was not in T&C at time of registration

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- Mr. X refuses to pay the invoice for ADR costs and we start litigation
- Court of Commerce rules against us on 27/6/2011
- Arguments DNS Belgium:
 - Accepted our T&Cs and is bound by it + also includes the later versions
 - Reimbursement rules are in T&C since 2009, ADR dates of 2010
- Arguments Mr. X:
 - Only version applicable at time of registration is valid

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- Reasoning of the Court of Commerce:

“DNS Belgium has indeed inserted in T&C the right to unilaterally change the registration rules in art. 9 a and b. However this may not be confused with the rules regarding ADR (art. 10).”

Hence the Court judged in favor of Mr. X

Case spontin.be

- DNS Belgium files appeal against the judgement of the Court of Commerce on 23/9/2011
- Case goes “quiet” after exchange of arguments in 2012
- Finally we get a judgement from the Court of Appeals on 19/4/2016:
 - The Court confirms the possibility to have unilateral changes in a contractual relation
 - But rejects the remainder of our arguments and rules in favor of Mr. X

Outcome & lessons learned

- Courts have a clear tendency to evaluate T&C in a restrictive way
- T&C subtitle for art. 9 states “Change of T&C” but still Court emphasizes “text refers to registration rules”
- Fact that registrants have been dully informed on changes is thrown out by Court
- Court confirms possibility for unilateral changes

Next steps?

- Complete review of our T&C's is planned
- Redraft the T&C with aim to remove all ambiguity
- Add certain clauses -> later versions of T&C are deemed to be accepted by registrants if they renew the registration

Conclusions?

- Keep in mind that courts will be restrictive in judging your T&C, as they consider you a monopolist and want to protect the user
- Unilateral changes work if you phrase it well
- Working with a renewal period opens further options
- Take advantage to do a sanity check of your T&C's