UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION OFFICE OF THE ADMINISTRATIVE LAW JUDGE Washington, D.C.

DBLIC DOCUMENTS

LEDERAL TRADE COMMISSION

ES 07 14 2014

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In the Matter of

ECM BioFilms, Inc., a corporation, also d/b/a Enviroplastics International,

Respondent.

Docket No. 9358 ORIGINAL

PUBLIC

RESPONDENT ECM BIOFILM'S MOTION IN LIMINE AND MEMORANDUM IN SUPPORT TO EXCLUDE DOCUMENTS CONCERNING THE EUROPEAN COLPLAST LITIGATION

Pursuant to 16 C.F.R. § 3.43 and the Scheduling Order, Respondent ECM BioFilms ("ECM") hereby moves this Court to bar two documents from being admitted into evidence. ¹ The documents relate to litigation that occurred in Europe between two private non-parties who are not directly related to ECM, Colplast S.R.L., an Italian company, and SPEED France S.A.S., a French company. The first document is a French tribunal's decision ("French decision") on Colplast's advertising as related to the University of Milan and a 12–36 month biodegradability claim. ² ECM has never made that claim. The French decision fails to cite to any scientific tests, any testimony, or any evidence. This decision is therefore irrelevant, unreliable, and immaterial because it is based on different facts, applies different law, and is based on an unknown and

¹ While there are only two court documents at issue in this motion, both of these documents have been translated for potential use in this litigation. So, ECM requests that the originals and their respective translations be deemed inadmissible.

² The originals and translated documents regarding this French decision are identified in Complaint Counsel's proposed exhibit list as CCX-177–CC-179.

necessarily incomplete evidentiary record. Moreover, while it has no probative value, it is highly prejudicial.

The second document is a settlement agreement from German litigation ("German settlement") between Colplast and Speed France that appears to arise out of similar litigation as that in the French decision.³ This document is also irrelevant because it only contains the terms of the settlement. Again, it contains no legal or evidentiary support for the settlement agreement and therefore has no probative value in this case.

Both documents should be barred because they are irrelevant, immaterial, and unreliable. Neither document discloses the testimony or documents upon which they were based. Both are predicated upon foreign facts and foreign law not at issue in this case. Further, neither document discloses what evidence was considered. And, any evidence that was considered was necessarily truncated and incomplete when compared to the directly relevant record for the case *sub judice*.⁴

In the alternative, even if either the French decision or German settlement is deemed to have some remote degree of relevance, that scintilla of relevance is substantially outweighed by a danger of prejudice, and by considerations of undue delay, waste of time, and/or needless burden to the record. If the Court decides to allow either of these documents into evidence, a minitrial would follow in order to determine what those documents largely fail to disclose—the specific facts, law and precedent applied, and the evidence considered. So, not only would the consideration of the two foreign documents cause ECM substantial prejudice, but would also invite retrial of matters not germane to the parties, the current dispute, the law governing that

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³ The originals and translated documents regarding this German settlement are identified in Complaint Counsel's proposed exhibit list as CCX-180 and CCX-181.

⁴ ECM approximates that between ECM, Complaint Counsel, and third parties, more than 250,000 documents have been disclosed in this case.

dispute, or the facts germane to that dispute. Accordingly, it would be a distraction, a detour and frolic, and it would cause undue delay and waste of the parties' and Court's time and resources.

BACKGROUND

Complaint Counsel proposes to include documents from French and German tribunals. *See* RX-A; RX-B. Both the French decision and German settlement seemingly mandate that an Italian company, Colplast S.R.L., must refrain from engaging in certain advertising as related to the biodegradability of their plastic products. *See* RX-A; RX-B.⁵ *Id.* Colplast is not, and has never been, ECM's customer, but was a customer of ECM's customer Italcom S.R.L. *See* RX-C. Both the French and German litigations were initiated not by any governmental agency, as is the case here, but by Colplast's competitor, Speed France S.A.S. *See* RX-A; RX-B.

As an initial matter, the French decision fails to identify what documents the tribunal considered, what testimony the tribunal considered, and what tests Colplast had at its disposal to support its claim. *See* RX-A. The decision also lacks any discussion of the scientific bases for the tribunal's holding, and only states, in a conclusory fashion, that Colplast's claim "is not supported by scientific tests." *See* RX-A. In addition, in the "Discussion" section, the French tribunal failed to consider certain exhibits for procedural reasons. *See* RX-A.

The French decision—while brief and void of any substantive scientific discussion—appears to be based, in part, on Article 2 of law no. 94-665 of August 4, 1994, which mandates the use of the French language in promotional materials. *See* RX-A. In addition, the decision held that the Colplast website contained false advertisements "with respect to: the reference of the University of MILAN, which appears misleading and false [and] the mention of the 100%

⁵These decisions, initially rendered in French and German, respectively, have been translated into English. ECM includes both the original and translated versions of the decision as exhibits.

biodegradability between 12 and 36 months . . ." Complaint Counsel does not contest the fact that ECM made neither of those claims. *See generally* Complaint. Lastly, the decision itself explicitly acknowledges that Colplast only "violate[d] the regulation applicable in France." *See* RX-A.

Like the French action, the German action was initiated not by any governmental entity, but by Speed France SAS. *See* RX-B. That document is merely a settlement agreed to by the private parties. *See* RX-B. The settlement document, unsurprisingly, contains only the terms of the settlement between the two private parties, and the vast majority of the document is dedicated to listing all of the specific advertising claims that Colplast agreed not to use in future. *See* RX-B. This settlement has no discussion of any issues relevant to this case, such as the testing relating to products manufactured with the ECM additive, or consumers' perception of ECM's marketing, or the claims recited in Complaint Counsel's complaint. *See* RX-B.

ARGUMENT

This Court should exclude evidence that is "irrelevant, immaterial, and unreliable." 16 C.F.R. § 3.43(b). Even if evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or if the evidence would be misleading, or based on considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Id.* The foreign documents should be excluded because they are irrelevant, immaterial, and unreliable as a result of being devoid of any legal or scientific reasoning and because they are based on facts and law not at issue in this case. Further, even if the foreign documents have a scintilla of probative value, that value is

substantially outweighed by the substantial prejudice ECM will suffer from a mini hearing based on the foreign documents introduced at trial.

A. The foreign documents are irrelevant, immaterial, and unreliable because they are based on facts, laws, and an evidentiary record different from this case.

The facts upon which the French decision and German settlement were based are in issue here. For example, the French case concerned only Colplast's marketing regarding the University of Milan and Colplast's marketing regarding a 12–36 month biodegradability claim—neither claim was made by ECM. *See* RX-A. It even appears that the decision was based, at least in part, on Colplast's lack of use of the French language in its marketing. *Id.* Complaint Counsel makes no claim that ECM made the marketing claims, relating to either the University of Milan or the 12–36 month biodegradation claim, which Colplast allegedly made. *See generally* Complaint. As such, the French decision, based on facts absent in this case, is wholly irrelevant. Further, the German settlement appears to be a private settlement between two parties that made no legal or factual findings, and therefore has no relevance in this case. *See* RX-B.

Second, the foreign decisions were obviously based on law that is not applied in this proceeding. As mentioned before, the French decision explicitly acknowledges the Colplast only "violate[d] the regulation applicable in France." *See* RX-A. We must also assume that Colplast settled in the German litigation because of those laws applicable to that proceeding. Therefore, both the German and French litigation are irrelevant, immaterial, and unreliable as they are both based on non-parties, foreign law and foreign facts not present in this case.

The foreign decisions are also unreliable, irrelevant and immaterial because of the presumably different record the courts and parties had before them in those cases and the vastly different laws at issue. ECM, Complaint Counsel, and third parties have supplied hundreds of thousands of documents during the extensive discovery process in this case. Indeed, this

discovery has revealed tests that even ECM was not aware of prior to this litigation. This Court will have the benefit of a well-developed and extensive record, to say the least. Colplast, an Italian company could not have had the extensive testing that ECM relies upon in this case, such as the favorable independent testing from laboratories such as Northeast Laboratories and Eden Labs. Therefore, any decision or settlement reached in a case with such a significantly more truncated record can have no relevance to this case.

B. Any minute value or relevance that the foreign documents have to this proceeding is substantially outweighed by the danger of unfair prejudice, and by considerations of undue delay, waste of time, and/or needless presentation of cumulative evidence.

This Court previously excluded a decision by the European Commission in a similar proceeding because the EU's decision's probative value was "substantially outweighed by the danger of unfair prejudice, and by considerations of undue delay, waste of time, and/or needless presentation of cumulative evidence." *In the Matter of Intel Corp.*, 2010 WL 1989988, at *6 (F.T.C. May 6, 2010). There, the Court explained even relevant and trustworthy evidence should be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, and by considerations of undue delay, waste of time, and/or needless presentation of cumulative evidence." *Id.*

The foreign cases should be excluded because their probative value—if any—is substantially outweighed by unfair prejudice to ECM, and because their admissibility would result in undue delay and a waste of time. "The purpose of this proceeding is to litigate the Complaint issued by the FTC," and not the foreign cases. *Intel Corp.*, 2010 WL 1989988, at *6. Allowing Complaint Counsel to introduce the foreign documents would necessarily result in a

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⁶ Based on the proposed exhibit lists supplied by both parties, there could be over 1,500 exhibits introduced at trial.

minitrial. Should Complaint Counsel intend that exhibit as evidence concerning the efficacy of ECM's product, or the effect of Colplast's marketing on consumers, ECM would need to expend resources to determine what evidence Colplast and Speed France introduced into that proceeding. ECM would also need to expend the resources determining what laws applied in that case, and how they are interpreted in the context of biodegradable products. That would necessary draw the parties and the court on a detour and frolic leading far afield from the relevant facts and law that will determine the outcome of this case.

In addition, trial courts have broad discretion to prohibit a party from introducing evidence that is likely to confuse the issues. *See Deviner v. Electrolux Motor, AB*, 844 F.2d 769, 774 (11th Cir. 1988). In *Deviner*, the appellate court upheld the trial court's decision to exclude documents relating to Swedish law and the effects in Sweden of that law, because it was well within the district court's discretion to avoid the confusion that would arise if Swedish law was introduced. *Id.* at 773–74. Similarly, allowing the foreign documents into evidence would result in confusion here, as the legal standards at issue and scientific standards for biodegradability from those operative in the United States.

Furthermore, regarding the unfair prejudice that ECM would suffer should these foreign documents be considered, it is well documented that prior acts by the *same* defendant are inadmissible to prove that the defendant acted illegally in the current case. *See, e.g., Jordan v. City of Chicago*, 2011 WL 6119147, at *2 (N.D. Ill. Dec. 8, 2011) (holding that evidence of the defendants' "prior arrests [were] inadmissible because the danger of unfair prejudice substantially outweigh[ed] what little probative value these arrests ha[d].") (citing Fed. R. Evid. 403; *Cruz v. Safford*, 579 F.3d 840, 845 (7th Cir.2009); *Young v. County of Cook*, , 2009 WL 2231782, at *6 (N.D. Ill. July 27, 2009)). This type of prejudice is even more

PUBLIC DOCUMENT

severe in this case, where ECM was not the prior bad actor and did not sell its product to the

party accused; rather the party accused of violating European law purchased the product from a

separate, independent corporate buyer not charged in either case. See RX-C. Therefore, not only

would a minitrial result if the two foreign documents are allowed into evidence, but ECM would

suffer prejudice because of an independent party's decision to agree to a settlement and because

of that independent party's loss before the French tribunal based on unrelated facts, on an

unknown evidentiary record, and under foreign scientific and legal standards having no

relevance in the United States.

RELIEF

Based on the foregoing reasons, ECM respectfully requests that this Court exclude from

evidence Complaint Counsel's proposed exhibits CCX-177–CCX-181.

Respectfully submitted,

/s/ Jonathan W. Emord

Jonathan W. Emord (jemord@emord.com)

EMORD & ASSOCIATES, P.C.

11808 Wolf Run Lane

Clifton, VA 20124

Telephone: 202-466-6937

Facsimile: 202-466-6938

DATED: July 14, 2014.

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STATEMENT CONCERNING MEET AND CONFER

Pursuant to Rule 3.22(g), 21 C.F.R. § 3.22(g), the undersigned counsel certifies that, on July 3, 214, Respondent's counsel conferred via telephone with Complaint Counsel in a good faith effort to resolve by agreement the issues raised in the foregoing Motion. The parties have been unable to reach an agreement on the issues raised in the attached motion.

Respectfully submitted,

Jonathan W. Emord (jemord@emord.com)

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11808 Wolf Run Lane Clifton, VA 20124

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UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION OFFICE OF THE ADMINISTRATIVE LAW JUDGES Washington, D.C.

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In the Matter of	Docket No. 9358 PUBLIC
ECM BioFilms, Inc., a corporation, also d/b/a Enviroplastics International,	
Respondent.	
[PROPOSED] ORDER GRANTING RESPONDENT ECM BIOFILMS, INC.'S MOTION IN LIMINE IN SUPPORT TO EXCLUDE DOCUMENTS CONCERNING THE EUROPEAN COLPLAST LITIGATION	
This matter having come before the Administrative Law Judge on July, 2014, upon a	
Motion in Limine to Exclude Documents Concerning the European Colplast Litigation, filed by	
Respondent ECM BioFilms, Inc. ("ECM") pursuant to Commission Rule 3.43 and the	
Scheduling Order.	
Having considered ECM's Motion and all supporting and opposing submissions, and for	
good cause appearing, it is hereby ORDERED that ECM's Motion is GRANTED; Proposed trial	
exhibits identified as CCX-177-CCX-181 are deemed inadmissible and shall not be considered	
at the hearing in this case.	
ORDERED:	D. Michael Chappell Chief Administrative Law Judge

Date:

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2014, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the Office of the Secretary through the e-filing system:

Donald S. Clark, Secretary Federal Trade Commission 600 Pennsylvania Ave., NW, Room H-113 Washington, DC 20580 Email: secretary@ftc.gov

One electronic courtesy copy to the Office of the Administrative Law Judge:

The Honorable D. Michael Chappell Administrative Law Judge 600 Pennsylvania Ave., NW, Room H-110 Washington, DC 20580

One electronic copy to Counsel for Complainant:

Katherine Johnson Elisa Jillson Division of Enforcement Division of Enfoncement Bureau of Consumer Protection **Bureau of Consumer Protection** Federal Trade Commission Federal Trade Commission 600 Pennsylvania Avenue, NW 600 Pennsylvania Avenue, NW Mail stop M-8102B Mail stop M-8102B Washington, D.C. 20580 Washington, D.C. 20580 Email: ejillson@ftc.gov Email: kjohnson3@ftc.gov

Jonathan Cohen Arturo Decastro Division of Enforcement Division of Enfoncement Bureau of Consumer Protection **Bureau of Consumer Protection** Federal Trade Commission Federal Trade Commission 600 Pennsylvania Avenue, NW 600 Pennsylvania Avenue, NW Mail stop M-8102B Mail stop M-8102B Washington, D.C. 20580 Washington, D.C. 20580 Email: jcohen2@ftc.gov Email: adecastro@ftc.gov

I certify that I retain a paper copy of the signed original of the foregoing document that is available for review by the parties and adjudicator consistent with the Commission's Rules.

Respectfully submitted,

/s/ Jonathan W. Emord

Jonathan W. Emord (jemord@emord.com)
EMORD & ASSOCIATES, P.C.
11808 Wolf Run Lane
Clifton, VA 20124

Telephone: 202-466-6937 Facsimile: 202-466-6938

DATED: July 14, 2014

RX-A

EXCERPT FROM THE MINUTES OF THE CLERK OF THE COURT FRENCH REPUBLIC IN THE NAME OF THE FRENCH PEOPLE

VILLEFRANCHE COMMERCIAL COURT [Tribunal de Commerce] TARARE

04/11/2013 ORDER DATED APRIL ELEVENTH, TWO THOUSAND THIRTEEN

A summons dated January 4, 2013 brought the case before the court for urgent proceedings.

The case was heard at the urgent interim hearing on March 14, 2013, at which sat:

- Mr. René CHAMBOST, President,

assisted by:

- Ms. Emmanuelle DONJON, Court Clerk,

after which the President discussed it to hand down this decision on this day.

Docket no. 2013R4

BETWEEN: the company SPEED FRANCE S.A.S.

53 RUE DE CHAVANNE PARC D'ACTIVITÉ D'ARNAS

BP 245

69658 ARNAS CEDEX

PLAINTIFF - represented by

Member of the Bar Isabelle FOILLARD, Attorney,

144 AVENUE DE LA LIBERATION - BP 100 69654 VILLEFRANCHE-SUR-SAONE, counsel,

and by Member of the Bar A. COVILLARD, replaced by Member of the Bar GUIBERTEAU, Attorney with the firm LAMY & ASSOCIES,

40 RUE DE BONNEL 69484 LYONS CEDEX 03, trial attorney

AND - the Company COLPLAST, Company under Italian law,

16 VIA S ALBERTO

31059 ZERO BRENCO TREVISO ITALY

DEFENDANT - represented by

Member of the Bar Sandra DORIZON,

46 RUE DE BASSANO 75008 PARIS, replaced by Member of the Bar

Valentina PILIA

Clerk of the Court's fees included in the expenses (Art. 701 of the CPC): €39.52 excluding tax, €7.75 VAT, €47.26 including all tax

Execution copy issued on 04/11/2013 to Member of the Bar A. COVILLARD (LYONS) Attorney with LAMY & ASSOCIES,

STATEMENT OF PARTIES' FACTS, PROCEDURES AND GROUNDS

Following a writ dated January 31, 2013, to which reference is made for further explanation, the Company SPEED France summoned the Company COLPLAST in urgent proceedings in order to

In light of Articles 872 and 873 of the Code of Civil Procedure, In light of Articles L. 121-1 and following the Consumer Code, In light of Law no. 94-665 dated August 4, 1994,

- State that the contentious information included on the product package marketed under the BIOFIL brand and the advertisements in relation thereto violate the regulation applicable to advertising inasmuch as it constitutes false and/or misleading allegations,

Consequently, and due to the offense of competing unfairly and the clearly unlawful interference resulting therefrom:

Enjoin COLPLAST from continuing or resuming, directly or indirectly, the distribution of any of those advertising materials, in any form whatsoever and subject to a permanent penalty of 5,000.00 Euros per document distributed in violation of the decision.

Order COLPLAST to take back all copies of the products sold in the contested packaging, currently in the possession of end users or its distributors, and more generally all copies of any objects and documents on which the contentious information appears, so that they may be destroyed together with those of all existing inventories of packaging and promotional material, in any location whatsoever, within eight days of issuance of the order, subject to a penalty of 5,000 Euros per day late in the performance of that obligation.

State that these recall and destruction operations will be carried out at the expense of COLPLAST under the oversight of any bailiff that the President of the Court chooses to appoint. The bailiff also has the mission of determining the number of copies of the documents actually distributed by comparing the number of copies taken and destroyed and the number of packages produced and the number of useful documents such as quotations, orders, press proofs, delivery slips by COLPLAST, the bailiff being required to send a copy of his certified report to the SPEED France Company.

Order the publication of the intervention order, at the expense of COLPLAST, in five daily papers or weekly or monthly magazines, to be chosen by SPEED France, for 5,000 Euros per publication excluding tax, at COLPLAST's expense.

Order the publication of the intervention order on the home page of the BIOFIL product's website at the address accessible on the date the Order was issued for a period of two months.

Order the publication of the intervention order on the home page of the COLPLAST website at the address accessible on the date the order was issued, for a period of two months.

- Reserve the right to oversee payment of the penalties ordered.

Order COLPLAST to pay SPEED France the sum of 5,000.00 Euros pursuant to Article 700 of the Code of Civil Procedure, as well as all costs of the proceedings.

- Order COLPLAST, in case the intervention decision is enforced, to pay compensation equivalent to the proportional tax for which the process server deems the creditor responsible pursuant to Article 10 of Decree 2001-212 dated March 8, 2001.
- State that the order will be enforceable upon presentation of the court order.

It is in this state that the case was called at the hearing on February 14, 2013.

After referral, the case was sent to the Hearing on March 14, 2013, where the parties appeared as stated above and after hearing their explanations, the President placed the case in deliberation until today.

Whereas Member of the Bar GUIBERTEAU, replacing Member of the Bar COVILLARD on behalf of SPEED FRANCE S.A.S., reiterates the findings of the writ of summons and, and by way of making reference to conclusions for further information, refutes the arguments by his opponent, in particular, preliminarily, on the objection to jurisdiction raised by COLPLAST, that the territorial jurisdiction of the VILLEFRANCHE - TARARE Commercial Court is incontestable inasmuch as in the case at hand, the interference that must be ended, as well as the injury suffered and the provisional measures, are all located on French territory and that furthermore, the location where the injury was suffered, or at the very least "the harmful consequences of the alleged actions," can be the registered office of the plaintiff

Member of the Bar GUIBERTEAU finds this exception to be purely dilatory and requests the full benefit of his writ of summons, increasing his request pursuant to Article 700 of the CPC to the sum of 10,000.00 Euros.

Whereas Member of the Bar Sandra DORIZON, replaced by Member of the Bar PILIA on behalf of COLPLAST, through pleadings in defense no. 2 to which reference is made for further information, opposes the request on the particular grounds that:

- > pursuant to Article 2 of EC regulation no. 44/2001 on judicial jurisdiction and the execution of judgments, only the Italian court can hear the dispute between the parties.
- > the requests by SPEED France are not founded and fall under the jurisdiction of the trial judge inasmuch as SPEED France has not demonstrated any urgency and COLPLAST is raising a serious dispute.

Me DORIZON pleads:

Preliminarily:

In light of Regulation EC 44/2001,

- A declaration of lack of jurisdiction in favor of the Treviso Court,

Primarily,

In light of Article 873 of the Code of Civil Procedure,

- Recognize that the request by SPEED France is not justified by any clearly unlawful interference.

Recognize that the grounds and claims of SPEED France are seriously debatable.

Reject all of the claims of SPEED France.

In any case,

Order SPEED France to pay the sum of 7,000 Euros to COLPLAST pursuant to Article 700 of the Code of Civil Procedure.

- Order it to pay all costs.

DISCUSSION

Preliminarily, there is cause to note that the jurisdiction of this urgent applications judge to establish the existence of a clearly unlawful interference in the matter at hand is not contested by any of the parties, and that that fact should therefore be recognized.

Whereas although the translation of exhibits 16 and 17 into French, which was requested, reached us during the deliberations initially scheduled, it should be noted that the post-hearing submissions that were authorized did not reach us until after expiration of that period and were sent only by fax, and will therefore not be taken into consideration.

On the lack of jurisdiction exception raised by the defendant:

Whereas Regulation EC no. 44/2001 dated December 22, 2000 relative to judicial jurisdiction in civil and commercial matters provides, in Article 5 thereof, that "A person domiciled in a Member State may be sued in another Member State... for matters relating to tort, or liability for negligence before the court in the place where the harmful event occurred or may occur."

The principle is similar in French law (Article 46 of the Code of Civil Procedure),

That, according to established precedents, the place where the injury was suffered, or the injury from the alleged events occurred, may be the plaintiff's registered office.

In the case at hand, the urgent applications judge is being asked to put an end to a clearly unlawful interference, and the resulting injury due to non-compliance with French law, by ordering measures located exclusively on French territory;

Consequently, the lack of jurisdiction exception raised by the defendant will be rejected.

Regarding the clearly unlawful nature of the actions by COLPLAST Srl

Whereas the urgent applications judge notes that:

- COLPLAST has not proven that all of the BIOFIL products that it delivered in France were in packaging conforming with French regulations, and particularly the language in which the information is provided on that packaging, which must be the French language;

The use of another language is unlawful, since Article 2 of law no. 94-665 of August 4, 1994 relative to the use of the French language stipulates that "the use of the French language is mandatory in the designation, promotion, display, user guides or instructions, description of the scope and warranty conditions for a good, product, or service, as well as the invoices and receipts." These provisions are applicable to goods, products, and services marketed in France, irrespective of their origin.

Some of that same information provided on that same packaging and/or used on the COLPLAST WEBSITE biofilm.org constitutes false advertising, in particular with respect to:

> the reference to the University of MILAN, which appears misleading and false,

>the mention of the 100% biodegradability rate between 12 and 36 months is not supported by scientific tests, but rather through an improper and ill-suited mathematical extrapolation;

Whereas this approach is unlawful in terms of Articles L. 120-1 and following articles of the Consumer Code, declaring that any false advertising or advertising that may mislead the consumer is prohibited and constitutes an unfair business practice.

Whereas it has also been noted that COLPLAST and SPEED France are competing companies inasmuch as they target the same Clients (manufacturers, distributors, and brush cutters users) for similar products; it is well-established case law that failure of a company to comply with a legal or regulatory obligation leads to a breach in the equality of the competitive struggle and places the party violating that regulation in an abnormally favorable situation with respect to its competitors;

Whereas the breach in the equality between two competitors caused by the unlawful actions of COLPLAST with respect to SPEED France necessarily cause injury to SPEED France and justifies that protective measures be taken, which alone can put a stop to the clearly unlawful interference thus established and so to prevent any imminent injury;

Whereas, however, COLPLAST has submitted its exhibit no. 21, "sales forecast" for the record, which indicates revenue of €65,000 for 2012 (€32,000 of which is for just the area made up of Belgium, the Netherlands, Luxembourg and France), SPEED France

did not contest these figures, and in light of the level of these revenues, there is no cause to proportion the requested measures.

Whereas there is cause to reject all of the other requests and grounds of the parties as being unfounded or inoperative;

Whereas SPEED France only initiated this procedure after issuing a formal notice to COLPLAST to cease its unlawful actions and the latter responded with a flat refusal, it would therefore clearly be inequitable to require SPEED France to bear the costs it was forced to incur to defend its interests, and it should be awarded the sum of 7,000.00 Euros under Article 700 of the Code of Civil Procedure,

Whereas the costs will be borne by the losing party.

Whereas by law, the order is enforceable as of pronouncement.

ON THESE GROUNDS,

THE PRESIDENT, assisted by the Court Clerk,

RULING PUBLICLY in Urgent Proceedings by Order, HEARING BOTH PARTIES IN FIRST INSTANCE, after discussions,

In light of the aforementioned summons,

In light of the explanations by the parties and the exhibits submitted to the proceedings,

In light of Article 873, paragraph 1 of the Code of Civil Procedure,

In light of Articles L. 120-1 and following articles of the Consumer

Code,

In light of Article L. 213-1 of the Consumer Code,

In light of law no. 94-665 of August 4, 1994,

In light of Article 700 of the Code of Civil Procedure,

REJECTING all other requests,

ACKNOWLEDGES to the parties that they do not contest the jurisdiction of this urgent applications judge to establish the existence of a clearly unlawful interference in the matter at hand,

REJECTS the lack of jurisdiction exception raised in favor of an Italian court,

CONSEQUENTLY,

DECLARES THAT IT HAS JURISDICTION,

RECOGNIZES that some of the contentious information provided on the product packaging marketed under the BIOFIL brand and on related advertising on the, biofil.org website violates the regulation applicable in France, in particular inasmuch as it constitutes false and/or misleading allegations constituting unfair competition and clearly unlawful interference resulting therefrom,

CONSEQUENTLY,

ENJOINS COLPLAST from continuing or resuming, directly or indirectly, the distribution of any of the advertising materials, in any form whatsoever and subject to a permanent penalty of 500.00 Euros per document distributed in violation of this decision, until it has complied with the French regulation.

ORDERS COLPLAST to take back all copies of products sold that exist in the contentious packaging, currently in the possession of end users or its distributors, and more generally all copies of all objects and documents on which the contentious information appears, so that they may be destroyed jointly with those of all existing inventories of packaging and promotional materials, in any location whatsoever, within eight days of issuance of the order, subject to a penalty of 1,000 Euros per day late in the performance of this obligation,

STATES AND RULES that unless it demonstrates the payment thereof by any sworn third parties (by document written or translated into French) at the hearing on the payment of penalties, COLPLAST may be required to pay the amount of the resulting penalties from the end of the above period until the hearing;

ORDERS the publication of this ORDER in two daily papers or weekly or monthly magazines, to be chosen by SPEED France, for 3,000 Euros per publication excluding tax, at COLPLAST's expense,

ORDERS the publication of this order on the home page of BIOFIL product's website at the address accessible on the date the Order is issued, for a period of two months.

ORDERS the publication of this Order on the home page of the COLPLAST website at the address accessible on the date the order is issued, for a period of two months.

RESERVES the right to settle the payment of the penalties thus ordered and REFERS the parties to that end to the urgent summons hearing on May 16, 2013, at 11:00 in Room C,

ORDERS COLPLAST to pay SPEED France the sum of 7,000.00 Euros pursuant to Article 700 of the Code of Civil Procedure,

ORDERS COPLAST to pay all costs of these proceedings in regards to this Order in the amount of 47.26 Euros inclusive of all tax.

STATES that this order is automatically enforceable after pronouncement.

Thus judged and ordered

The signatures follow:

- Mr. CHAMBOST René, President
- Ms. DONJON Emmanuelle, Clerk of the Court

ACCORDINGLY, THE FRENCH REPUBLIC MANDATES AND ORDERS:

- ALL BAILIFFS, CALLED UPON HERETOFORE, TO ENFORCE THIS DECISION,
- -ALL ASSISTANT PUBLIC PROSECUTORS AND PUBLIC PROSECUTORS AT THE HIGH COURT TO PROVIDE SUPPORT AS NECESSARY,
- ALL LAW ENFORCEMENT COMMANDERS AND OFFICERS TO ASSIST WHEN LEGALLY REQUIRED,

Collated execution COPY, certified true copy, containing 8 pages and issued in enforceable form

Clerk of the Court:





EXTRAIT DES MINUTES DU GREFFE TRIBUNAL DE COMMERCE DE VILLEFRANCHE - TARARE

20/06/2013

ORDONNANCE DU VINGT JUIN DEUX MILLE TREIZE

La Juridiction des référés a été saisie de la présente affaire par assignation en date du 4 janvier 2013

La cause a été entendue à l'audience des référés du 30 mai 2013 à laquelle siégeait :

- Monsieur Christian DUGELAY, Président, assisté de :

- Madame Emmanuelle DONJON, Commis-greffier, après quoi le Président en a délibéré pour rendre ce jour la présente décision,

Rôle n° 2013R4

ENTRE

- La société SPEED FRANCE S.A.S.

53 RUE DE CHAVANNE PARC D'ACTIVITÉ D'ARNAS

BP 245

69658 ARNAS CEDEX

DEMANDEUR - représenté(e) par

Maître Isabelle FOILLARD, Avocat, -

144 AVENUE DE LA LIBÉRATION - BP 100 69654 VILLEFRANCHE-SUR-SAONE, Avocat postulant,

et par Maître A. COVILLARD, Avocat Cabinet LAMY & ASSOCIES,

40 RUE DE BONNEL 69484 LYON CEDEX 03

substitué par Maître RIERA-THIEBAULT, Avocat plaidant.

ET

- la Société COLPLAST, Société de droit Italien,

16 VIAS ALBERTO

31059 ZERO BRENCO TREVISO ITALIE

DÉFENDEUR - représenté(e) par

Maître Sandra DORIZON,

46 RUE DE BASSANO 75008 PARIS

Et par Maître Chiara POGGI-FERRERO

46 RUE DE BASSANO 75008 PARIS

Frais de Greffe compris dans les dépens (Art. 701 du CPC) : 39.52 € HT, 7.75 € TVA, 47.27 € TTC

Copie exécutoire délivrée le 21/06/2013 à Maître Isabelle FOILLARD, Avocat, Copie exécutoire délivrée le 21/06/2013 à Maître Sandra DORIZON, (PARIS)

EXPOSE DES FAITS, PROCEDURE ET MOYENS DES PARTIES

La Société SPEED France invoquant des actes de concurrence déloyale de la part la Société COLPLAST a obtenu une Ordonnance en date du 11 avril 2013 dans laquelle la Juridiction des référés du Tribunal de céans :

- CONSTATE que certaines mentions litigieuses portées sur l'emballage du produit commercialisé sous la marque BIOFIL et sur la publicité faite à son sujet sur le site internet biofil.org contreviennent à la réglementation applicable en France notamment en ce qu'elles constituent des allégations fausses et/ou trompeuses constitutives de concurrence déloyale et de trouble manifestement illicite en découlant,

EN CONSEQUENCE,

- FAIT INTERDICTION à la Société COLPLAST de poursuivre ou reprendre, directement ou indirectement, la diffusion de l'un des documents publicitaires, sous quelque forme que ce soit et sous astreinte définitive de 500,00 Euros par document diffusé en infraction de la présente décision, tant qu'elle ne s'est pas mise en conformité avec la règlementation française.
- ORDONNE la reprise par la Société COLPLAST de tous les exemplaires de produits vendus existants dans l'emballage poursuivi, actuellement en possession des utilisateurs finaux ou de ses distributeurs, ainsi que plus généralement de tous les exemplaires de tous objets et documents sur lesquels les mentions litigieuses figurent, afin qu'il soit procédé à leur destruction conjointement à celles de tous les stocks d'emballage et documents promotionnels existants, en quelque lieu qu'ils soient, et ce dans les huit jours du prononcé de l'ordonnance, sous astreinte de 1.000 Euros par jour de retard dans l'exécution de cette obligation,
- DIT et JUGE que, à défaut d'en justifier par tout tiers assermenté (par document en langue française ou traduit en français) à l'audience de liquidation des astreintes, la Société COLPLAST s'expose à se voir mis à charge le montant de l'astreinte qui résulterait de l'écoulement du délai jusqu'à l'audience;

ORDONNE la publication de la présente Ordonnance dans deux quotidiens ou revues hebdomadaires ou mensuelles, au choix de la Société SPEED France, à concurrence de 3.000 Euros HT par insertion, aux frais de la Société COLPLAST,

ORDONNE la publication de la présente ordonnance sur la page d'accueil du site internet consacré au produit BIOFIL à l'adresse accessible au jour du prononcé de l'Ordonnance, pendant une durée de deux mois.

ORDONNE la publication de la présente Ordonnance sur la page d'accueil du site internet de la Société COLPLAST à l'adresse accessible au jour du prononcé de l'ordonnance, pendant une durée de deux mois.

SE RESERVE le pouvoir de liquider les astreintes ainsi prononcées et RENVOIE les parties pour ce faire à l'audience des référés du 16 mai 2013, à 11 h 00 salle C,

CONDAMNE la Société COLPLAST à payer à la Société SPEED France la somme de 7.000,00 Euros au titre de l'article 700 du Code de Procédure Civile.

CONDAMNE la société COLPLAST aux entiers dépens de la présente instance liquidés en ce qui concerne la présente Ordonnance à la somme de 47,26 Euros TTC.

DIT que la présente ordonnance est exécutoire de plein droit dès son prononcé.

C'est en cet état que l'affaire a été appelée à l'Audience du 16 mai 2013, pour seul objet de vérifier s'il y a lieu de procéder à une liquidation des astreintes ordonnées s'agissant de la reprise des emballages litigieux.

Après renvoi, l'affaire est revenue à l'Audience du 30 mai 2013, où les parties ont comparu comme il est dit ci-dessus et après avoir entendu leurs explications Monsieur le Président a mis l'affaire en délibéré jusqu'à ce jour.

Attendu que Maître RIERA-THIEBAULT pour le compte de la société SPEED FRANCE par voie de conclusions responsives en date du 30 mai 2013, auxquelles il est renvoyé pour plus ample exposé réfute les arguments de son contradicteur et conclut :

- Constater que la Société COLPLAST ne rapporte pas la preuve par un tiers assermenté de l'exécution de l'obligation de publier l'ordonnance de référé du 11 avril 2013 sur son site internet et celui réservé au produit BIOFIL ;

En conséquence,

- Condamner la Société COLPAST à verser à la Société SPEED France la somme de 3.000,00 Euros à titre de dommages et intérêts pour résistance abusive en raison de l'inaction de cette dernière depuis la date de la notification de la décision,
- Constater que la Société COLPLAST ne rapporte pas la preuve de la cessation de la diffusion des documents publicitaires non conformes avec la règlementation française,

En conséquence,

- Liquider l'astreinte provisoire de 500 Euros par document diffusé depuis la date du 11 avril 2013 multiplié par le nombre de documents jusqu'à la date de la présente audience de Liquidation,
- Constater que la Société COLPLAST n'a pas procédé à la reprise et à la destruction de <u>tous</u> les exemplaires de produits, documents et emballages litigieux,

En conséquence,

- Liquider l'astreinte provisoire de 1000 Euros par jour de retard à compter du 19 avril 2013 jusqu'à la date de la présente audience de liquidation, soit 1.000 € x 41 jours = 41.000 Euros,
- Fixer une nouvelle astreinte provisoire de 1.500 Euros par jour de retard à compter du 8^{ème} jour suivant l'audience du 30 mai 2013, si, dans ce délai, la société COLPLAST n'a pas rapporté la preuve par un tiers assermenté :
 - 1- De la publication de la décision sur internet,



- 2- De la cessation de la diffusion des documents publicitaires (en produisant notamment les factures correspondant aux achats de documents publicitaires auprès de ses fournisseurs depuis le début de l'année 2012 ainsi qu'un catalogue modifié)
- 3- De la reprise de <u>tous</u> les exemplaires de produits, emballages ou documents litigieux tant chez les distributeurs qu'utilisateurs finaux (en produisant notamment les factures de vente desdits produits aux distributeurs concernés, les bons de retour, le nombre de produits vendus aux utilisateurs finaux, les mesures accomplies auprès des utilisateurs finaux, le nombre de retour, etc...)
- 4- De la destruction de <u>tous</u> les exemplaires de produits, emballages ou documents litigieux en produisant notamment les mesures de destruction des éléments récupérés par SOPARTEX.
- Condamner la Société COLPLAST au paiement d'une somme de 4.000 Euros au titre de l'article 700 du Code de procédure Civile,
 - Condamner la Société COLPLAST aux entiers dépens.
- Ordonner le paiement par la Société COLPLAST, en cas d'exécution forcée de la décision à intervenir, d'une indemnité équivalente au droit proportionnel mis à la charge du créancier par l'Huissier instrumentaire au titre de l'article 10 du décret 2001-212 du 8 mars 2001.

Attendu que Maître Sandra DORIZON, pour le compte de la Société COLPLAST, par voie de conclusions en défense en date du 30 mai 2013 auxquelles il est renvoyé pour plus ample exposé résiste à la demande en indiquant notamment que le demandeur est de mauvaise foi car le nécessaire a été fait malgré des conditions très compliquées pour l'exécution des mesures.

Maître DORIZON indique à la Barre qu'il est certain que l'Ordonnance sera présente sur le site pendant deux mois.

Maître DORIZON demande par conséquent à Monsieur le Président du Tribunal de Céans de constater que la Société COLPLAST a parfaitement exécuté l'ordonnance du 11 avril 2013, et de débouter la Société SPEED France de l'ensemble de ses demandes.

DISCUSSION

> Sur la publication de l'ordonnance du 11 Avril 2013 sur le site internet de la société COLPLAST et du produit BIOFIL :

Attendu que par constat d'huissier en date du 15 mai 2013, la société COLPLAST démontre que sur la page d'accueil des sites www.colplast-srl.com et www.biofil.org, figure la publication de l'ordonnance de Référé du Tribunal de Commerce de VILLEFRANCHE-TARARE du 11 avril 2013 ;

Attendu qu'il en est toujours de même à la date du présent délibéré ;

Attendu que l'impact de cette publication n'est pas lié à une date de publication mais bien à la durée de publication ;

Il convient par conséquent de dire que la publication sur les deux sites internet est bien prouvée et qu'il n'y aura pas lieu de retenir la résistance abusive de la société COLPLAST, si la durée de publication est bien de deux mois ;

Sur la preuve de la cessation de la diffusion des documents publicitaires :

Attendu que la société COLPLAST démontre :

- Avoir informé ses distributeurs en France de l'ordonnance émise par le Tribunal de Commerce de VILLEFRANCHE-TARARE, en leur demandant de manière explicite leur collaboration pour l'exécuter;
- Avoir demandé à ses distributeurs de cesser la vente de tous produits COLPLAST, de rappeler ceux qui avaient déjà été vendus et de détruire l'ensemble des emballages de produits BIOFIL destinés au marché Français;
- Que ne disposant plus de produits en France, elle a cessé toute mesure de promotion en France ;
- Qu'un certain nombre de produits étant chez des particuliers il sera très difficile, voire impossible de tous les rapatrier ;
- Attendu que si les délais imposés par l'ordonnance du 11 avril 2013 n'ont pas été exactement respectés, il convient de reconnaître que plusieurs éléments indépendants et étrangers à la société COLPLAST sont intervenus pour son exécution ;
- Attendu que l'ordonnance du 11 avril 2013 avait pour objet principal de faire cesser la vente des produits non conformes ;
- Attendu que la société COLPLAST démontre avoir cessé toute commercialisation desdits produits ;
- Attendu que la Société SPEED France ne démontre pas qu'il en soit autrement.

Il convient par conséquent de dire qu'aucune astreinte n'est due à ce titre.

> Sur la preuve du paiement des condamnations au titre de l'article 700 du Code de Procédure Civile et des dépens :

Attendu que la société COLPLAST démontre par sa pièce 7 avoir effectué un virement de ces sommes sur le compte CARPA du conseil de la société SPEED France.

Il y a donc lieu de dire que la société COLPLAST a exécuté l'ordonnance nonobstant les délais particulièrement courts pour l'exécution, les difficultés dues à la pluralité et à l'indépendance propre des distributeurs et à la période largement chômée en Italie en France et en Belgique.

Attendu que la présente Ordonnance est consécutive à l'Ordonnance du 11 avril 2013, et qu'il convient par conséquent de faire supporter les dépens de celle-ci à la Société COLPLAST.



LE PRESIDENT, ASSISTE DU GREFFIER,

STATUANT PUBLIQUEMENT en matière de Référé par Ordonnance CONTRADICTOIRE EN PREMIER RESSORT, après en avoir délibéré,

Vu l'assignation sus-énoncée,

Vu l'Ordonnance de référé en date du 11 avril 2013,

Vu les explications des parties et les pièces versées aux débats,

CONSTATE que la société COLPLAST a exécuté l'ordonnance du 11 avril 2013,

DEBOUTE la société SPEED France de l'ensemble de ses demandes.

CONDAMNE la Société COLPLAST à payer à la société SPEED FRANCE S.A.S. les dépens de la présente Ordonnance liquidés à la somme de 47,27 Euros TTC.

Ainsi jugé et prononcé

Suivent les signatures :

- Monsieur DUGELAY Christian, Président
- Madame DONJON Emmanuelle, Greffier

EXPÉDITION sur 6 pages, certifiée conforme à la minute

Délivré à VILLEFRANCHE SUR SAÔNE, le 02/06/2014

Le Greffier:



APOSTILLE (Convention de La Haye du 5 octobre 1961)

1.République française

Le présent acte public

- 2. a été signé par Emmanuelle DONJON
- 3. agissant en qualité de greffier
- 4. est revêtu du sceau/timbre de **Tribunal de Commerce de VILLEFRANCHE-TARARE (RHONE)**

Attesté

- 5. à LYON
- 6. le 04 Juin 2014
- 7. par le Procureur Général près la Cour d'appel de Lyon
- 8. sous le n° 5684 6 (° 5684
- 9. Sceau

10. Signature

Bérengère SINEMIAN

"L'Apostille confirme seulement l'authenticité de la signature, du sceau ou timbre sur le document. Elle ne signifie pas que le contenu du document est correct ou que la République française approuve son contenu."



EXTRAIT DES MINUTES DU GREFFE RÉPUBLIQUE FRANÇAISE AU NOM DU PEUPLE FRANÇAIS

TRIBUNAL DE COMMERCE DE VILLEFRANCHE - TARARE

11/04/2013

ORDONNANCE DU ONZE AVRIL DEUX MILLE TREIZE

La Juridiction des référés a été saisie de la présente affaire par assignation en date du 4 janvier 2013

La cause a été entendue à l'audience des référés du 14 mars 2013 à laquelle siégeait :

- Monsieur René CHAMBOST, Président,

assisté de :

- Madame Emmanuelle DONJON, Commis-greffier, après quoi le Président en a délibéré pour rendre ce jour la présente décision,

Rôle nº 2013R4

ENTRE

- La société SPEED FRANCE S.A.S.

53 RUE DE CHAVANNE PARC D'ACTIVITÉ D'ARNAS

BP 245

69658 ARNAS CEDEX

DEMANDEUR - représenté(e) par

Maitre Isabelle FOILLARD, Avocat, 144 AVENUE DE LA LIBÉRATION - BP 100 69654 VILLEFRANCHE SUR SAONE, avocat postulant, et par Maître A. COVILLARD, substitué par Maître GUIBERTEAU. Avocat Cabinet LAMY & ASSOCIES, 40 RUE DE BONNEL 69484 LYON CEDEX 03, avocat plaidant

ET

- la Société COLPLAST, Société de droit Italien,

16 VIA S ALBERTO

31059 ZERO BRENCO TREVISO ITALIE

DÉFENDEUR - représenté(e) par

Maître Sandra DORIZON.

46 RUE DE BASSANO 75008 PARIS, substitué par Maître Valentina PILIA.

Frais de Greffe compris dans les dépens (Art. 701 du CPC) : 39,52 € HT, 7,75 € TVA, 47,26 € TTC

Copic exécutoire délivrée le 11/04/2013 à Maître A. COVILLARD, (LYON) Avecat Chi LAMY & ASSOCIES,

EXPOSE DES FAITS, PROCEDURE ET MOYENS DES PARTIES

Suivant exploit en date du 31 janvier 2013, auquel il est renvoyé pour plus ample exposé, la Société SPEED France a fait assigner en référé la Société COLPLAST aux fins de

Vu les articles 872 et 873 du Code de Procédure Civile, Vu les articles L.121-1 et suivants du Code de la Consommation, Vu la Loi n°94-665 du 4 août 1994,

 Dire que les mentions litigieuses portées sur l'emballage du produit commercialisé sous la marque BIOFIL et les publicités faites à son sujet contreviennent à la réglementation applicable à la publicité en ce qu'elles constituent des allégations fausses et/ou trompeuses,

En conséquence, et à raison de la faute, de la concurrence déloyale caractérisée et du trouble manifestement illicite en découlant :

- Faire interdiction à la Société COLPLAST de poursuivre ou reprendre, directement ou indirectement, la diffusion d'aucun de ces documents publicitaires, sous quelque forme que ce soit et sous astreinte définitive de 5.000,00 Euros par document diffusé en infraction de la décision à intervenir.
- Ordonner la reprise par la Société COLPLAST de tous les exemplaires de produits vendus dans l'emballage poursuivi, actuellement en possession des utilisateurs finaux ou de ses distributeurs, ainsi que plus généralement de tous les exemplaires de tous objets et documents sur lesquels les mentions litigieuses figurent, afin qu'il soit procédé à leur destruction conjointement à celles de tous les stocks d'emballage et documents promotionnels existants, en quelque lieu qu'ils soient, et ce dans les huit jours du prononcé de l'ordonnance, sous astreinte de 5.000 Euros par jour de retard dans l'exécution de cette obligation.
- Dire que ces opérations de rappel et destruction interviendront aux frais de la Société COLPLAST sous le contrôle de tel huissier que Monsieur le Président du Tribunal voudra bien désigner, l'huissier de justice ayant également pour mission de déterminer le nombre d'exemplaires des documents effectivement diffusés par le rapprochement entre le nombre d'exemplaires retirés et détruits et le nombre d'emballages réalisés et le nombre de documents utiles tels que devis, commandes, bons à tirer, bons de livraison par la Société COLPLAST, l'huissier devant faire parvenir une copie de son procès-verbal de constat à la Société SPEED France.
- Ordonner la publication de l'Ordonnance à intervenir, aux frais de la Société COLPLAST, dans cinq quotidiens ou revues hebdomadaires ou mensuelles, au choix de la Société SPEED France, à concurrence de 5.000 Euros HT par insertion, aux frais de la Société COLPLAST,
- Ordonner la publication de l'ordonnance à intervenir sur la page d'accueil du site internet consacré au produit BIOFIL à l'adresse accessible au jour du prononcé de l'Ordonnance, pendant une durée de deux mois.
- Ordonner la publication de l'ordonnance à intervenir sur la page d'accueil du site internet de la Société COLPLAST à l'adresse accessible au jour du prononcé de l'ordonnance, pendant une durée de deux mois.

- Se réserver le pouvoir de liquider les astreintes ainsi prononcée ;
- Condamner la Société COLPLAST à payer à la Société SPEED France la somme de 5.000,00 Euros au titre de l'article 700 du Code de Procédure Civile ainsi qu'aux entiers dépens de l'instance.
- Ordonner le paiement par la Société COLPLAST, en cas d'exécution forcée de la décision à intervenir, d'une indemnité équivalente au droit proportionnel mis à la charge du créancier par l'huissier instrumentaire au titre de l'article 10 du décret 2001-212 du 8 mars 2001.
- Dire que l'ordonnance sera exécutoire au seul vu de la minute.

C'est en cet état que l'affaire a été appelée à l'Audience du 14 février 2013,

Après renvoi, l'affaire est revenue à l'Audience du 14 mars 2013, où les parties ont comparu comme il est dit ci-dessus et après avoir entendu leurs explications Monsieur le Président a mis l'affaire en délibéré jusqu'à ce jour.

Attendu que Maître GUIBERTEAU substituant Maître COVILLARD pour le compte de La société SPEED FRANCE S.A.S. reprend les conclusions de son exploit introductif d'instance et par voie de conclusions auxquelles il est renvoyé pour plus ample exposé réfute les arguments de son contradicteur et indique notamment à titre liminaire, sur l'exception d'incompétence soulevée par la Société COLPLAST que la compétence territoriale du Tribunal de Commerce de VILLEFRANCHE – TARARE est incontestable dès lors qu'en l'espèce le trouble auquel il doit être mis fin, ainsi que le dommage subi et encore les mesures provisoires sont tous localisés sur le territoire français et qu'en outre le lieu où le dommage a été subi, ou à tout le moins « les conséquences dommageables des agissements allégués » peut tout à fait être le siège social du demandeur.

Maître GUIBERTEAU considère cette exception purement dilatoire et sollicite l'entier bénéfice de son exploit introductif d'instance en augmentant sa demande au titre de l'article 700 du CPC à la somme de 10.000,00 Euros.

Attendu que Maître Sandra DORIZON, substituée par Maître PILIA pour le compte de la Société COLPLAST, par voie de conclusions en défense n°2 auxquelles il est renvoyé pour plus ample exposé résiste à la demande au motif notamment :

>qu'en vertu de l'article 2 du règlement CE n°44:2001 sur la compétence judiciaire et l'exécution des jugements seule la juridiction italienne peut connaître du litige né entre les parties.

> que les demandes de la Société SPEED France ne sont pas fondées et relèvent de la compétence du juge du fond dès lors que la Société SPEED France ne démontre pas d'urgence et la Société COLPLAST soulève une contestation sérieuse.

Maître DORIZON conclut:

A titre liminaire:

Vu le règlement CE 44/2001,

Se déclarer incompétent au profit du Tribunal de Trévise,

Au principal,

Vu l'article 873 du Code de Procédure Civile.

- Constater que la demande de SPEED France ne se justifie par aucun trouble manifeste illicite,
- Constater que les moyens et demandes de la Société SPEED France sont sérieusement contestables.
- Débouter la Société SPEED France de l'ensemble de ses demandes.

En tout état de cause,

- Condamner la Société SPEED France à verser la somme de 7.000 Euros à la Société COLPLAST au titre de l'article 700 du Code de Procédure Civile.
- La condamner aux entiers dépens.

DISCUSSION

A titre liminaire, il y a lieu de constater que la compétence du juge des référés de céans pour établir l'existence d'un trouble manifestement illicite dans la matière de cette espèce n'est contestée par aucune des parties et qu'il y a donc lieu de leur en donner acte..

Attendu que si la traduction en langue française des pièces 16 et 17 qui avait été demandée nous est bien parvenue pendant le délibéré initialement fixé, il convient de noter que la note en délibéré qui avait été autorisée ne nous est parvenue qu'après expiration de ce délai et par le seul moyen d'une télécopie, il n'y a donc pas lieu d'en tenir compte.

Sur l'exception d'incompétence soulevée par la défenderesse :

Attendu que le règlement CE n° 44/2001 du 22 décembre 2000 concernant la compétence judiciaire en matière civile et commerciale dispose dans son article 5 « qu'une personne domiciliée sur le territoire d'un état membre peut être attraite dans un autre état membre »... « en matière délictuelle ou quasi délictuelle, devant le tribunal du lieu où le fait dommageable s'est produit ou risque de se produire »

Qu'en droit français le principe est similaire (article 46 du Code de Procédure Civile),

Que, selon une jurisprudence constante, le lieu où le dommage a été subi, ou les conséquences dommageables des agissements allégués, peut être le siège social du demandeur.

Qu'en l'espèce, il est demandé au juge des référés de mettre fin à un trouble manifestement illicite, et au dommage en résultant, pour non respect de la législation française en ordonnant des mesures localisées exclusivement sur le territoire français;

Qu'en conséquence l'exception d'incompétence soulevée par la demanderesse sera rejetée.

Sur le caractère manifestement illicite des agissements de COLPLAST Srl

Attendu que le juge des référés constate :

- Que la Société COLPLAST ne justifie pas que l'ensemble des produits BIOFIL qu'elle a livrés en France l'ont été dans des emballages conformes à la réglementation française et particulièrement la langue dans laquelle les mentions portées sur ces emballages qui doit être le français;
- Que l'emploi d'une autre langue est illicite car la loi n° 94-665 du 4 Août 1994 relative à l'emploi de la langue française dispose en son article 2 que « dans la désignation, l'offre, la présentation, le mode d'emploi ou d'utilisation, la description de l'étendue et des conditions de garantie d'un bien, d'un produit ou d'un service, ainsi que dans les factures et quittances l'emploi de la langue française est obligatoire. » que ces dispositions sont applicables lors de la commercialisation en France des biens, produits et services quelle que soit leur origine.
- Que, concernant ces mêmes mentions portées sur ces mêmes emballages et/ou utilisées sur le site INTERNET biofil.org de COLPLAST Srl, certaines constituent une publicité mensongère particulièrement en ce qui concerne :
 - la référence à l'Université de MILAN apparaît trompeuse et mensongère,
 - la mention du taux de biodégradabilité de 100% entre 12 et 36 mois n'est pas justifiée, par des tests scientifiques mais par une extrapolation mathématique abusive et non adaptée;

Attendu que cette façon d'agir est illicite au regard de l'article L 120-1 et suivants du Code de la consommation disposant qu'est interdite et constitue une pratique commerciale déloyale toute publicité mensongère ou de nature à induire en erreur le consommateur.

Attendu qu'il est constaté, par ailleurs, que les sociétés COLPLAST et SPEED France sont des sociétés concurrentes en ce qu'elles s'adressent aux mêmes Clients (fabricants, distributeurs et utilisateurs de débroussailleuses) pour des produits similaires ; qu'il est de jurisprudence constante que le non respect par une société d'une obligation légale ou réglementaire conduit à une rupture dans l'égalité des moyens de la lutte concurrentielle et met celui qui enfreint cette réglementation dans une situation anormalement favorable par rapport à ses concurrents ;

Attendu que la rupture de l'égalité entre deux concurrents provoquée par les agissements illicites de la Société COLPLAST vis-à-vis de la Société SPEED France cause nécessairement un dommage à la société SPEED France et justifie que soient prises des mesures conservatoires, seules de nature à mettre fin au trouble manifestement illicite constitué ainsi qu'à prévenir tout dommage imminent;

Attendu toutefois que la Société COLPLAST verse au dossier sa pièce n° 21 « prévision des ventes », sur laquelle il est indiqué un chiffre d'affaires de 65.000 € pour 2012 (dont 32.000€ pour la seule zone Belgique, Hollande, Luxembourg et France), que la Société SPEED France

n'a pas contesté ces chiffres et que compte-tenu du niveau de ces chiffres d'affaires il y aura lieu de proportionner les mesures demandées.

Attendu qu'il y aura lieu de rejeter toutes les autres demandes et moyens des parties comme non fondées ou inopérants ;

Attendu que la société SPEED France n'a engagé la présente procédure qu'après avoir mis en demeure la société COLPLAST de cesser ses agissements illicites; que cette dernière a répondu par une fin de non-recevoir; qu'il serait donc manifestement inéquitable de laisser à la charge de la société SPEED France les frais qu'elle a dû engager pour défendre ses intérêts, et qu'il convient de lui accorder la somme de 7.000,00 Euros au titre de l'article article 700 Code de Procédure Civile,

Attendu que les dépens seront à la charge de la partie qui succombe.

Attendu que de droit l'ordonnance est exécutoire dès son prononcé.

PAR CES MOTIFS.

LE PRESIDENT, assisté du Commis-Greffier.

STATUANT PUBLIQUEMENT en matière de Référé par Ordonnance CONTRADICTOIRE EN PREMIER RESSORT, après en avoir délibéré,

Vu l'assignation sus-énoncée,

Vu les explications des parties et les pièces versées aux débats,

Vu l'article 873 alinéa 1 du Code de Procédure Civile,

Vu l'article L 120-1 et suivants du Code de la consommation,

Vu l'article L 213-1 du Code de la consommation,

Vu la loi nº 94-665 du 4 Août 1994.

Vu l'article 700 du Code de Procédure Civile,

REJETANT toutes autres demandes,

DONNE ACTE aux parties qu'elles ne contestent pas la compétence du juge des référés de céans pour établir l'existence d'un trouble manifestement illicite dans la matière de cette espèce,

REJETTE l'exception d'incompétence soulevée au profit d'une juridiction ialienne,

EN CONSEQUENCE,

SE DECLARE COMPETENT,

CONSTATE que certaines mentions litigieuses portées sur l'emballage du produit commercialisé sous la marque BIOFIL et sur la publicité faite à son sujet sur le site internet biofil.org contreviennent à la réglementation applicable en France notamment en ce qu'elles constituent des allégations fausses et/ou trompeuses constitutives de concurrence déloyale et de trouble manifestement illicite en découlant,

EN CONSEQUENCE.

FAIT INTERDICTION à la Société COLPLAST de poursuivre ou reprendre, directement ou indirectement, la diffusion de l'un des documents publicitaires, sous quelque forme que ce soit et sous astreinte définitive de 500,00 Euros par document diffusé en infraction de la présente décision, tant qu'elle ne s'est pas mise en conformité avec la règlementation française.

ORDONNE la reprise par la Société COLPLAST de tous les exemplaires de produits vendus existants dans l'emballage poursuivi, actuellement en possession des utilisateurs finaux ou de ses distributeurs, ainsi que plus généralement de tous les exemplaires de tous objets et documents sur lesquels les mentions litigieuses figurent, afin qu'il soit procédé à leur destruction conjointement à celles de tous les stocks d'emballage et documents promotionnels existants, en quelque lieu qu'ils soient, et ce dans les huit jours du prononcé de l'ordonnance, sous astreinte de 1.000 Euros par jour de retard dans l'exécution de cette obligation,

DIT ET JUGE que, à défaut d'en justifier par tout tiers assermenté (par document en langue française ou traduit en français) à l'audience de liquidation des astreintes, la Société COLPLAST s'expose à se voir mis à charge le montant de l'astreinte qui résulterait de l'écoulement du délai jusqu'à l'audience;

ORDONNE la publication de la présente Ordonnance dans deux quotidiens ou revues hebdomadaires ou mensuelles, au choix de la Société SPEED France, à concurrence de 3.000 Euros HT par insertion, aux frais de la Société COLPLAST,

ORDONNE la publication de la présente ordonnance sur la page d'accueil du site internet consacré au produit BIOFIL à l'adresse accessible au jour du prononcé de l'Ordonnance, pendant une durée de deux mois.

ORDONNE la publication de la présente Ordonnance sur la page d'accueil du site internet de la Société COLPLAST à l'adresse accessible au jour du prononcé de l'ordonnance, pendant une durée de deux mois.

SE RESERVE le pouvoir de liquider les astreintes ainsi prononcées et RENVOIT les parties pour ce faire à l'audience des référés du 16 mai 2013, à 11 h 00 salle C,

CONDAMNE la Société COLPLAST à payer à la Société SPEED France la somme de 7.000,00 Euros au titre de l'article 700 du Code de Procédure Civile.

CONDAMNE la société COLPLAST aux entiers dépens de la présente instance liquidés en ce qui concerne la présente Ordonnance à la somme de 47,26 Euros TTC.

DIT que la présente ordonnance est exécutoire de plein droit dès son prononcé.

Ainsi jugé et prononcé

Suivent les signatures :

- Monsieur CHAMBOST René, Président
- Madame DONJON Emmanuelle, Greffler

EN CONSÉQUENCE LA RÉPUBLIQUE FRANÇAISE MANDE ET ORDONNE

- À TOUS LES HUISSIERS DE JUSTICE SUR CE REQUIS DE METTRE LA PRÉSENTE DÉCISION À EXÉCUTION.
- AUX PROCUREURS GÉNÉRAUX ET AUX PROCUREURS DE LA RÉPUBLIQUE PRÈS LES TRIBUNAUX DE GRANDE INSTANCE D'Y TENIR LA MAIN.
- À TOUS COMMANDANTS ET OFFICIERS DE LA FORCE PUBLIQUE DE PRÊTER MAIN FORTE LORSQU'ILS EN SERONT LÉGALEMENT REQUIS.

EXPÉDITION collationnée, certifiée conforme à la minute, contenant 8 pages et délivrée en la forme exécutoire

Le Greffier:



RX-B

RECEIVED 10 MAR 2014

Erl GB

31 0 434/13



Cologne

Decision

in the case

between Speed France SAS, Parc d'Activities, 53 Rue de Chavanne 69658 Arnas, France

> ("the Plaintiff")

Authorized representative: Rechtsanwalte Loschelder,

Limited Partnership,

11 Konrad-Adenauer-Ufer, 50668

Cologne, a g a i n s t

Colplast S.R.L., 16 via S. Alberto, 31059 Zero Branco (TV), Italy,

("Defendant")

Authorized representative: Rechtsanwalte Preu, Bohlig &

Partner, 11a Leopoldstr., 80802

Munich,

it is established that between the parties, the following

settlement

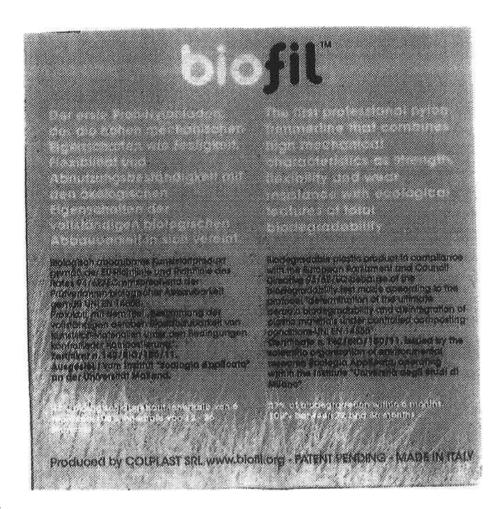
has been concluded:

- 1. The Defendant shall be obliged to refrain from advertising or from arranging the advertising, in a commercial context for the purpose of competition for trimmer cords in the Federal Republic of Germany
 - a) using the slogan "The first 100% biologically degradable nylon thread" and/or
 - b) using the slogan "The first professional nylon thread, combining the high mechanical properties such as strength, flexibility and wear resistance with the ecological properties of complete biological wear resistance" and/or
 - c) using the slogan "Biologically degradable synthetic product in accordance with EU Directive and Council Directive 94/62/EC in accordance with the test procedure for biological degradability in accordance with UNI EN 14855" and/or

- d) using the slogan "Protocol with the title 'Determining the complete aerobically biological degradation of synthetic materials under controlled composting conditions" and/or
- e) using the slogan "Certificate No. 142/BIO/180/11. Issued by the Institute "Ecologia Applicata at the University of Milano" and/or
- f) using the slogan "47% biologically degradable within 6 months. 100% within 12 36 months"

if this takes place as stated on the following product packaging:

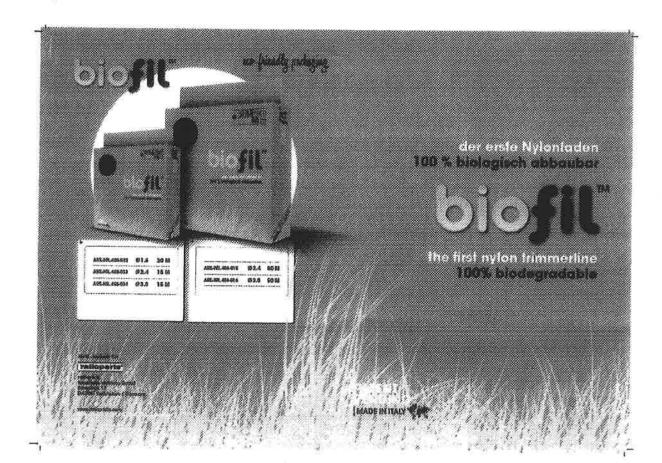


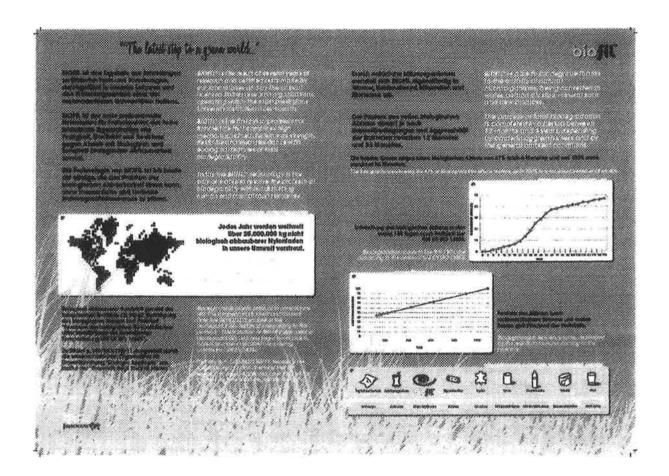


and/or

- g) using the slogan "The technology from BIOFIL is currently the only one able to solve the problem of biological degradability without disturbing human or animal food resources" and/or
- h) using the slogan "Biologically degradable synthetic in accordance with EU Directive 94/62/EC. Confirmation of the biological degradability in accordance with the protocol "Decision on the overall biological degradation under controlled composting conditions UNI EN ISO 14855" and/or
- i) using the slogan "Certificate No. 142/BIO/180/11. Issued by the scientific Organization for Environmental Research "Ecologia Applicata" at the , "Universita degli studi di Milano" and/or
- j) using the slogan "BIOFIL independently converts itself into water, carbon dioxide, minerals and biomass through the action of micro-organisms";

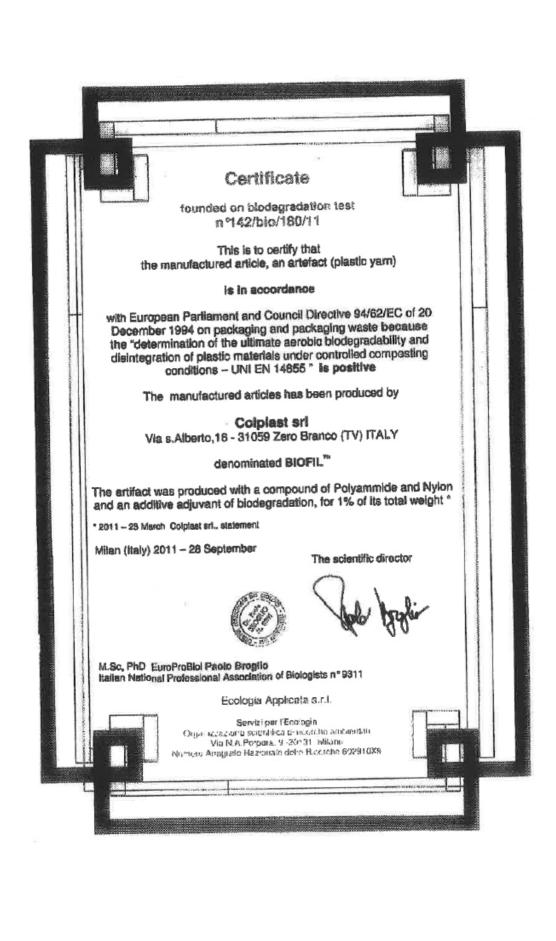
if this takes place as stated in the following brochure:





and/or

 with the following miniaturized "Certificate founded on biodegradation test No. 142/bio/180/11



The Defendant is also obliged, for each future culpable contravention of any of the above obligations, to pay to the Plaintiff a penalty the amount of which is to be determined at the Plaintiff's discretion and examined by the competent court in the event of dispute.

- 2. For statements and illustrations on the websitewww.biofil.org, the obligations under art. 1 shall not apply until 1 April 2014.
- 3. The Defendant shall pay the Plaintiff the sum of EUR 8,430.00 by 31 May 2014.
- 4. The Defendant shall, due to the circumstances of the case LG Köln 31 O 434/13, make no claim against "Biofil" products suppliers in the Federal Republic of Germany before 1 August 2014.
- 5. This settlement shall cover all claims and counterclaims by the parties under life circumstances based on the case LG Köln 31 O 434/13.
- 6. The Defendant shall bear the costs of the case LG Köln 31 O 434/13. The Plaintiff shall, in view of art. 3, make no claim for its legal and extra-legal expenses except for court fees.
- The place of jurisdiction for all disputes from and into connection with this agreement shall be Cologne.

The sum in dispute in these proceedings and the settlement have been set at EUR 180,000.00

The date of the ruling on 20 March 2014 has been repealed.

Cologne , 28 February 2014 31st Civil Division

Kehl Presiding Judge at the Regional Court Dr Bruhns Judge at the Regional Court Judge Kowalewsky

[Stamp: Regional Court, Cologne] [Illegible Signature] Michels, Legal Assistant as Court Registrar 31 O 434/13

Ausfertigung





Beschluss

In dem Rechtsstreit

des Speed France SAS, Parc d'Activités, 53 rue de Chavanne, 69658 Arnas, Frankreich,

Klägers,

Prozessbevollmächtigte:

Rechtsanwälte Loschelder

Partnerschaftsgesellschaft,

Konrad-Adenauer-Ufer 11, 50668 Köln,

gegen

die Colplast S.R.L., via S. Alberto 16, 31059 Zero Branco (TV), Italien,

Beklagte,

Prozessbevollmächtigte:

Rechtsanwälte Preu, Bohlig & Partner,

Leopoldstr. 11 a, 80802 München,

wird festgestellt, dass zwischen den Parteien folgender

Vergleich

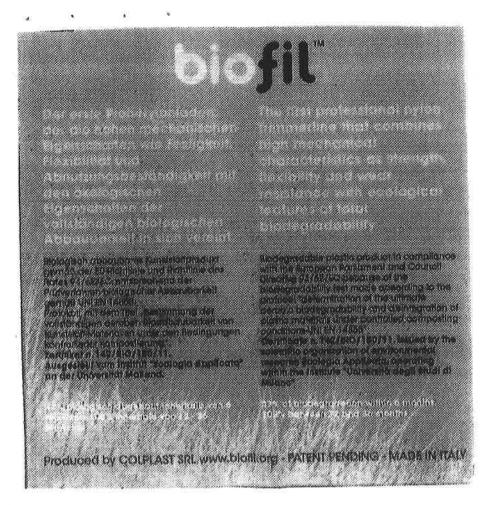
zustande gekommen ist:

- 1. Die Beklagte verpflichtet sich, es zu unterlassen, im geschäftlichen/ Verkehr zu Zwecken des Wettbewerbs für Trimmerfäden in der Bundesrepublik Deutschland
 - a) mit der Aussage "Der erste Nylonfaden 100 % biologisch abbaubar" und/oder
 - b) mit der Aussage "Der erste Profi-Nylonfaden, der die hohen mechanischen Eigenschaften wie Festigkeit, Flexibilität und Abnutzungsbeständigkeit mit den ökologischen Eigenschaften der vollständigen biologischen Abbaubarkeit in sich vereint" und/oder
 - c) mit der Aussage "Biologisch abbaubares Kunststoffprodukt gemäß der EU-Richtlinie und Richtlinie des Rates 94/62/EC, entsprechend der Prüfverfahren biologischer Abbaubarkeit gemäß UNI EN 14855" und/oder

- d) mit der Aussage "Protokoll, mit dem Titel "Bestimmung der vollständigen aeroben, Bioabbaubarkeit von Kunststoff-Materialien unter den Bedingungen kontrollierter Kompostierung" und/oder
- e) mit der Aussage "Zertifikat n. 142/BIO/180/11. Ausgestellt vom Institut "Ecologia Applicata" an der Universität Mailand" und/oder
- f) mit der Aussage "47 % biologisch abgebaut innerhalb von 6 Monaten. 100 % innerhalb von 12 - 36 Monaten"

zu werben und/oder werben zu lassen, wenn dies geschieht wie auf der nachstehend wiedergegebenen Produktverpackung;

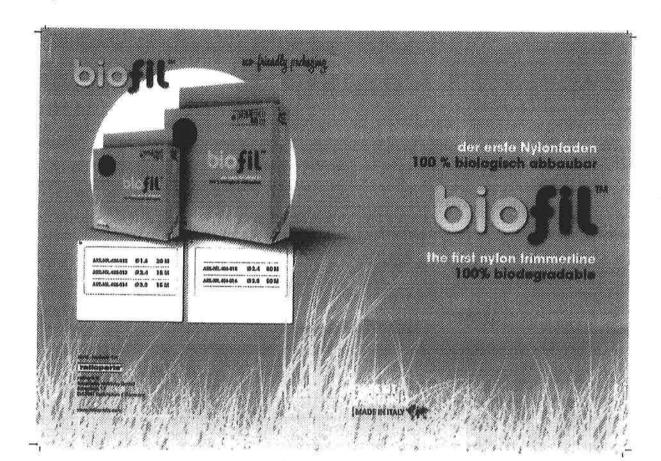


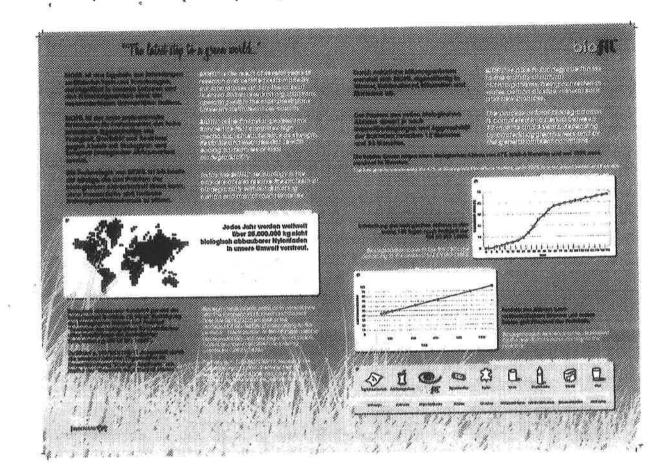


und/oder

- g) mit der Aussage "Die Technologie von BIOFIL ist bis heute die einzige, die das Problem der biologischen Abbaubarkeit lösen kann, ohne menschliche und tierische Nahrungsmittelressourcen zu stören" und/oder
- h) mit der Aussage "Biologisch abbaubarer Kunststoff gemäß der Europäischen Richtlinie CE 94/62. Bestätigung des biologischen Abbaus laut Protokoll "Beschluss des biologischen Gesamtabbaus unter Verhältnissen der kontrollierten Kompostierung UNI EN ISO 14855" und/oder
- i) mit der Aussage "Zertifiziert n. 142/BIO/180/11. Ausgestellt durch die wissenschaftliche Organisation für Umweltforschung "Ecologia Applicata" am Institut der "Università degli studi di Milano" und/oder
- j) mit der Aussage "Durch natürliche Mikroorganismen wandelt sich BIOFIL eigenständig in Wasser, Kohlendioxyd, Mineralien und Biomasse um";

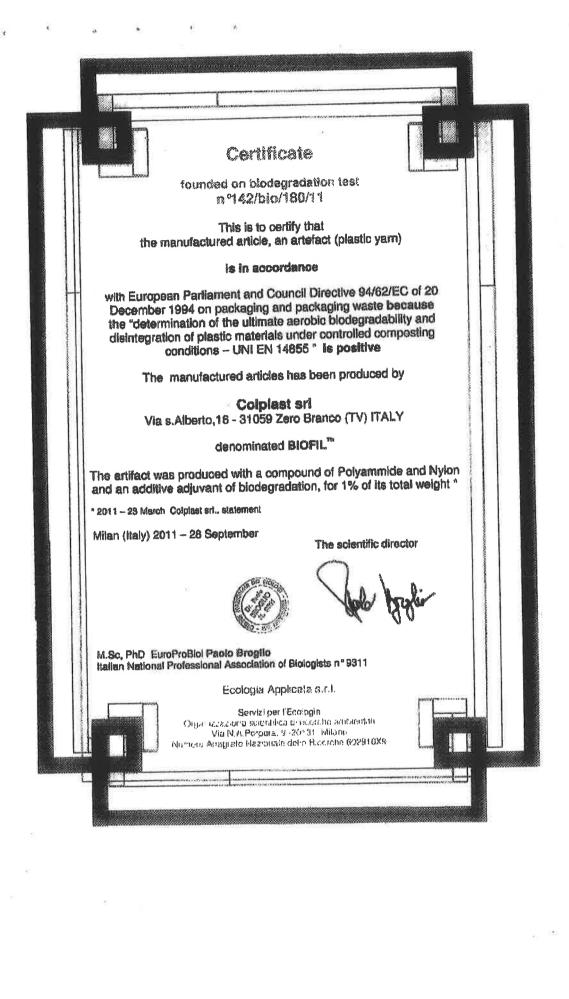
zu werben und/oder werben zu lassen, wenn dies geschieht wie in der nachstehend wiedergegebenen Broschüre;





und/oder

k) mit dem nachfolgend verkleinert wiedergegebenen "Certificate founded on biodegradation test n° 142/bio/180/11" zu werben



Die Beklagte verpflichtet sich weiter, an die Klägerin für jeden einzelnen künftigen schuldhaften Fall der Zuwiderhandlung gegen eine der obigen Verpflichtungen eine Vertragsstrafe zu zahlen, deren Höhe von der Klägerin nach billigem Ermessen zu bestimmen und im Streitfall vom zuständigen Gericht zu überprüfen ist.

- 2. Für Aussagen und Darstellungen auf der Internetseite www.biofil.org gelten die Verpflichtungen gemäß Ziffer 1 erst ab dem 01.04.2014.
- 3. Die Beklagte entrichtet an die Klägerin bis 31.05.2014 einen Betrag von 8.430 Euro.
- 4. Die Klägerin wird wegen des Sachverhalts, der Gegenstand des Verfahrens LG Köln 31 O 434/13 ist, bis 01.08.2014 keine Ansprüche gegenüber Anbietern von "Biofil"-Produkten in der Bundesrepublik Deutschland geltend machen.
- Mit diesem Vergleich sind sämtliche Ansprüche und Gegenansprüche der Partelen aus dem Lebenssachverhalt, der dem Verfahren LG Köln 31 O 434/13 zugrunde liegt, erledigt.
- 6. Die Kosten des Rechtsstreits LG Köln 31 O 434/13 trägt die Beklagte. Die Klägerin stellt im Hinblick auf Ziff. 3 keinen Antrag betreffend ihre gerichtlichen und außergerichtlichen Kosten mit Ausnahme der Gerichtsgebühren.
- 7. Gerichtsstand für alle Streitigkeiten aus und im Zusammenhang mit dieser Vereinbarung ist Köln.

Der Streitwert für den Rechtsstreit und den Vergleich wird auf jeweils 180.000,00 EUR festgesetzt.

Der Verkündungstermin am 20.03.2014 wird aufgehoben. กอ้า

Köln, 28.02.2014

31. Zivilkammer

Kehl

Vorsitzender Richter am

Landgericht

Dr. Bruhns

Richterin am Landgericht

Kowalewsky Richterin

Ausgefertig

Michels, Matizbeschäftig

als Urkundsbeamtin der Gernäftsstell

RX-C

Colplast SRL

10/8/2012

Colplast SRL Via S Alberto, 16 ΚM 4:44 PM Treviso, Zero Branco Italy

Contact: Berton, Francesco

Rec'd call from Francesco who said he is customer of italcom having problems over there and would really like to speak to Bob. Bob ws not available took msg for call back

He realizes he has to buy from Italcom but they are not helpful in getting him testing he needs for products w/ Nylon.

He would really like a call back in the mornign our time he will be in office all day.

He also provided a mobile number in database.

He says competitors are coming against them and no support from Italcom. He is very worried and just wants to talk to the mfg.

10/9/2012

11:16 AM Colplast SRL Via S Alberto, 16 JS Treviso, Zero Branco Italy

Contact: Berton, Francesco

Phoned for Bob. Re: testing w/ nylon. He has results of his testing but needs more. Competitors are moving against them w/ legal action. Wants as much proof as possible. Asked if we have tested w/ nylon? Yes but only internal - qualititative - anareobie & aerobic & eco studies. Final results positive. His results 46% in 6 months. Has been asking Italcom but has nothing. Asked Bob for something in writing. Bob went back to ours were only internal. Still asking for email summary. Purchased 100 kg in 2012 - expect 1000 kg next year. This is introductory year. - He's very optimistic. Europe this year. Nex year Japan & North America. Customers having doubts based on competitors. Lawyer sending letter to customer threatening legal action if they sell. Bob telling him not to worry about oxo. He says he's worried about the French. Lots of \$ to put to legal action & very well known name. Wants to stop them before they proceed w/ legal action. Gave Bob email address.

He has american distributor visiting tomorrow. Asked Bob for info today. Bob says busy but will get to him late tonight. He says OK. Bob says he will do what he can.

10/10/2012

Colplast SRL Via S Alberto, 16 1:48 PM JS Treviso, Zero Branco Italy

Contact: Berton, Francesco

Email from Bob to Francesco Berton

w/ Biodeg cert Colplast & blank customer cert attached.

Bob is sorry that he left the office last night without having taken care of his request. He knows info was time sensative and Bob let him down. Bob cannot apologize enough.

Attached is copy of our Customer Cert that his co must print, sign & return. This certifies that products will be mfg to our requirements. Normally the Cert of Biodeg would not be issued until the signed Cust Cert has been returned but in the interest of providing him with as much info as possible in a timely manner, we have issued it.

He also wants to assure Berton that ECM has performed internal testing on various base resins, incluing nylon, combined w/ ECM. This testing was qualitiative in nature and was performed anaerobically as well as aerobically. This testing as well as the eco-studies performed showed positive results regarding the biodeg and eco-safety of the product.

2:54 PM Colplast SRL Via S Alberto, 16 JS Treviso, Zero Branco Italy

Contact: Berton, Francesco

Email from Francesco Berton to Bob.

He will send back the letter ASAP

He believes in ECM otherwise they would never have invested so much in ads & marketing.

He would like any specific evidence or reports on our qualitative tests on nylon.

Evidence would be appreciated for commercial and legal if it possible to use for that purpose otherwise they will keep it internal and confidential. Will make them feel safer that what they are doing is correct and legal.

Wants the contact info for a lab in the US that can do biodeg testing. What is the most common test for the US? This will help them convince their US distributor who is scared by info from the competition.

5/20/2014 Page 1 of 4 1/24/2013

12:57 PM Colplast SRL Via S Alberto, 16 RS
Treviso, Zero Branco Italy

Contact: Berton, Francesco

FYI -

Email from Chiara Busato to Bob FYI - Francesco Berton

She just called & left message w/ Kristen. Met Bob at exibition in Milan last May. Partner of Italcom. Aware the situation has changed and would like to know how ECM will proceed w/ sales channel. Their customers received email from Bob.

Their customer, Colplast, contacted ECM w/ no reply asking for a copy of biodeg test made in the US. Customer had endured stops from European competitors and now has to attend a court meeting in France because they don't believe ECM is working.

Colplast did testing by Broglio and repleated the test in another lab. Says ECM not working.. They had asked Italcom for testing but never got it.

Asks if Bob knows how hard it is to promote ECM in Italy.

1:59 PM Colplast SRL Via S Alberto, 16 JS
Treviso, Zero Branco Italy

Contact: Berton, Francesco

cc Email from Chiara Busato to Bob. Cc: Francesco Berton, Enrico Busato (Nothing attached)

Per your phone conversation, she is sending Bob the biodeg reports from Ecologia Applicata Prof Broglio and Stanzione Sperimentale Carta from Milan customer Colplast.

Ecologia Applicata reports the customer test reaches 46.67% of biodeg in 180 days while the rport of Stanzione Sperimentale della Carta reach 11% after 91 days. Test was stopped as lab techs advised it would go no further.

Both tests were 1% ECM using 14855 but have totally different results.

Colplast's competitors in Germany & France are putting pressure on Colplast to stop distribution. His distributors have received notice that there will be a judgement. Berton, owner of Colplast is willing to demonstrate to his French competitor, Speed France that it is biodeg and will try to sue his competitor for ruining Colplast's image. Wants the testing we have from our US labs.

1/25/2013

2:17 PM Colplast SRL Via S Alberto, 16 JS

Contact: Berton, Francesco

Treviso, Zero Branco Italy

cc Email from Chaira Busato to Bob. ccL Enrico Busato, Berton of Colplast

Mr. Berton of Colplast received formal notice from the court of Lyon France to participate at the court meeting on 2/14 in Lyon. Is there any possibility to receive the report of biodeg w/ ECM & polyammide made in the US to demonstrate biodeg? Time is short - have to act quickly.

1/28/2013

11:47 AM Colplast SRL Via S Alberto, 16 JS
Treviso, Zero Branco Italy

Contact: Berton, Francesco

cc Email from Chiara Busato to Bob. Cc: Francesco of Colplast & E Busato

w/ SSCCPPR2011.PDF, Microsoft_Word_-_REPORT_Colplast n 142_defubutuvo[1].pdf, SSCCPBR2010.pdf attached.

Re: ECM in Italy - report of Colplast - formal notice received from Lyon court France

1/29/2013

9:05 AM Colplast SRL Via S Alberto, 16 KM
Treviso, Zero Branco Italy

Contact: Berton, Francesco Treviso, Zero Branco

CC:

Email from Bob to Enrico Busato CC: Francesco Berton, and E Busato.

Told them that Bob reivewed the docs. There is no question that each test reports demonstrates true biodeg of the polymer substrates tesetd. Just a matter of time and ambient conditions and will fully biodeg. The test methodology is not well designed. We are completeing work on a new methodology.

Once I see what the precise legal action is will be able to advise. Your client has plenty of evidence to support a claim of biodeg.

5/20/2014 Page 2 of 4

1/30/2013

Colplast SRL Via S Alberto, 16 JS 11:20 AM Treviso, Zero Branco Italy

Contact: Berton, Francesco

Bob and CS received 6 emails w/ a total of 17 attachments -

Re: Colplast, Broglio, Speed France.

It seems Speed France is suing Colplast, the manufacturer of plastic yarn w/ ECM.

Jeanie's notes:

Speed France has an oxo version of plastic yarn. Speed France had their lab CNET do testing on Colplast yarn. I believe they did some sort of test to see what ingredients were in Colplast yarn - not biodeg testing. Speed France's attorney sent letter saying yarn cannot be biodeg w/ only 1% organic starch. It also seems the Speed France lawyer is mis-reading Colplast website regarding the EU standards and what Colplast is actually stating. Also they say the Berton of Colplast was informed of these things at some GAFA Fair in September and did not deny or provide explanation. (I guess in Europe this is an admission of guilt??) Tedasche responded for Colplast setting them straight and educating Speed France. Also told them to email all of the Colplast customers they had contacted to retract what they said.

There also seems to be an issue w/ Broglio and if he is actually affiliated w/ the University of Milan in some way. He says he is the Scientific Coordinator of ESAE srl and ESAE srl is a spin-off of the University of Milan (it is per the University's website).

2/1/2013

3:59 PM Colplast SRL Via S Alberto, 16 KM Treviso, Zero Branco Italy

Contact: Berton, Francesco

Email from Bob to Chiara Busato CC: Enrico Busato and Francesco Berton of Colplast.

There were to reports attached to your email

We need to see actual lab reports and msg stating not to continue w/ testing. Also need to see actual court papers.

When I can eval these dos should take no more than a day to give recommendations.

2/6/2013

Colplast SRL Via S Alberto, 16 11:11 AM KM

Treviso Zero Branco Italy Contact: Berton, Francesco

CC: Email from Chiara Busato to Bob w/ Attachments entitled piece 12 and piece 13

cc: Francesco of Colplast and Enrico Busato

Asks if Bob has any news to communicate to Mr. Berton regarding the docs for lega action for Colplast. Please reply to Chaira and Mr. Berton.

2/7/2013

Colplast SRL Via S Alberto, 16 11:49 AM JS

Treviso, Zero Branco Italy Contact: Berton, Francesco

cc Email from Bob to Chiara Busato cc: Francesco Berton, Enrico Busato, Arco Chiara (?)

He just received the translations form all the materials so can review & reply. Sorry for the delay. Will give recommendations in 24 hrs. To start Bob would be preparing a countersuit as the oxo-degradable tech and testing is misleading if not fraudulent.

2/11/2013

Colplast SRL Via S Alberto, 16 JS 8:43 AM

Treviso, Zero Branco Italy Contact: Berton, Francesco

cc Email from Chiara Busato to Bob cc: Fracesco @ colplast, Enrico Busato Looking for news on the docs sent. Due time is approaching. Would like Bob's opinion today.

5/20/2014 Page 3 of 4

2/12/2013

11:29 AM Colplast SRL Via S Alberto, 16 JS
Treviso, Zero Branco Italy

Contact: Berton, Francesco

cc Email from Bob to Chiara Busato cc: Francesco Berton, Enrico Busato, Arco Chiara (?)

Apologized for the delays on getting her the comments. Bob is sure that if this is anythign like our legal system the 14th is simply her opportunity to demonstrate that you are going to actively oppose their allegations. Bob imagines that Colplast will have much more time to prepare their defenses countersuit.

First it is important to realize that their competitor and accuser Speed France is in worse shape than they are as to scientific proof of their claims. This is important in legal cases because the best thing to occur in this type of case is for the case to be drawn out or for them to withdraw their accusations knowing time will bolster your claims & damage theirs.

Second Bob is a member of the ASTM and a US rep for ISO and have been working full time in the matter of biodeg of polymers for over 13 years so he knows what he is talking about.

Bob will discuss her testing before going into theirs.

Re the Innovhub testing - there is no question that the product biodegs. 7% biodeg after 91 days when only 1.1% or so of additive used. Her statement that the sample was not biodeg is unfounded. She is also applying spec for controlled composting to a product that is not likely to be composed.

Bob explained what a standard test method is. And what a spec is.

Bob explained that the tests used ISO 14855 . Talked about the results the carbon being converted to CO2 and what the results of 7% and 47% mean.

Questions weather Colplast product passed or failed is illogical. Results are results. It is for knowledgeable scientists to interpret these results. Bob would disagree w/ both of the scientists but especially Dr. Sadocco. What she has done is apply commercial composting spec to a product not intended to be used in comm composting systems. Tells her what the spec is about and that it is meaningless for the Colplast product. Says test labs should stick tousing Standard Test Methods and reporting of their results. What has been shown is that Colplast material will biodeg under aerobic conditions. - which is where the product will be disposed of. It is important for the court to understand that the biodeg plastic industry is still in it's infacky as pooposed w/ photodegradable. Has been fraught w/ inadequate standardized test methods and specs.

Concerging Broglio use of the University of Milan's name - it's too bad but does not make his equipment, methodology or results less valid.

1/29/2014

2:58 PM Colplast SRL Via S Alberto, 16 ML Treviso, Zero Branco Italy

Contact: Berton, Francesco

Email from Francesco Berton to Bob

It's been a few months, but they are still going on, advertising and selling their product, and mainly fighting against competitors and OXO's. A new big customer is very interested and they are now negotiating. they are asking for the Material Safety Data Sheet of ECM Masterbatch Pellets, and he just now realized that he never received something like that from ECM's distributor. can Bob be so kind to send him this document as soon as possible? it's quite urgent as they are negotiating the last details with the customer and he wants to close the contract this week.

4:01 PM Colplast SRL Via S Alberto, 16 ML Treviso, Zero Branco Italy

Contact: Berton, Francesco

Email from Bob to Francesco Berton

Attachements: MSDS ECM6_0701 120220.pdf

Attached is the sheet he requested. Good luck with the potential customer.

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