



Regulations of commission for trade representative contracts

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GRP Rainer Lawyers Tax Advisors, Cologne, Berlin, Bonn, Düsseldorf, Hamburg, Munich, Stuttgart, Frankfurt www.grprainer.com elaborates: The higher regional court in Munich (Az. 23 U 4793/11) decided on March 22nd 2012 that commission determining clauses can be ineffective in view of coexisting and simultaneously completed cooperation agreement and trade-agent contract. According to § 307 para. 1 sentence 2 BGB (Federal code of law) they can be invalid if they are contradictory.

In this certain case at the higher regional court of Munich, two parties fought over the premise to claims of a commission for a trade-agent contract from a cooperation agreement, as well as, a simultaneously agreed upon and coexisting trade-agent contract. The defendant appealed that a claim to a commission payment can only be justified within the parameters of the cooperation agreement, if a finance-contract is prepared, completed and signed due to the trade-agents umpiring.

The higher regional court of Munich argued that in view of the trade-agent-contract, this clause stands in violation to the transparency dictate of § 307 para. 1 sentence 2 BGB. In the matter of dispute over the trade-agent-contract the regulation § 87 para. 1 HGB was used. According to the court the coexisting regulations of the cooperation agreement and the trade-agent-contract are unclear and contradictory. It also wasn't evident which regulation was prevalent. A predominant regulation could not be determined. In light of the cooperation agreements regulations, an unjustified disadvantage is assumed according to § 307 para. 2 BGB, because of the risk that the claim to a commission could be suppressed and invalidated by causality of the framework of the cooperation agreement.

The non-concessions complaint is pending at the German federal court under Az. VII ZR 114/12.

Let a lawyer advise you regarding trade-agent law affairs. A lawyer can counsel enterprisers, as well as trade agents regarding the structuring of contractual relationships: from claims to closure.

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Pressekontakt

GRP Rainer LLP Lawyers Tax Advisors

Herr Michael Rainer
Hohenzollernring 21-23
50672 Cologne

grprainer.com/en
press@grprainer.com

Firmenkontakt

GRP Rainer LLP Lawyers Tax Advisors

Herr Michael Rainer
Hohenzollernring 21-23
50672 Cologne

grprainer.com/en
press@grprainer.com

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Anlage: Bild

