



Regulations of commission in the standard business terms (AGB) 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 a commission determining clause can be invalid in view of coexisting and simultaneously completed cooperation agreement and trade-agent contract because, they can be contradictory.

In this certain case the higher regional court of Munich had to decide, 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 is only justified within the parameters of the cooperation agreement, if a finance-contract is prepared, completed and signed due to the trade-agents umpiring.

In view of the trade-agent-contract, this clause stands in violation to the transparency dictate of § 307 para. 1 sentence 2 BGB, argued the higher regional court of Munich. In the matter of dispute over the trade-agent-contract the regulation § 87 para. 1 HGB was used. 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. The lawyers at GRP Rainer counsel enterprisers, as well as trade agents regarding the structuring of contractual relationships: from claims to closure. Our lawyers will contact the opposition, check possible claims and will support you in their enforcement - be it extrajudicial or judicial.

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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

