

LUXEMBOURG



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1. New Legislation	
Topic:	Distance marketing of consumer financial services (implementation of 2002/65/EC directive)
Where:	Luxembourg
What Happened:	<p>The distance marketing of consumer financial services is now governed by the new law of 18 December 2006.</p> <p>The law only applies to relationships between consumers and professionals and introduces specific obligations for the professionals who offer their services to consumers. These obligations mostly focus on the consumer information requirement.</p> <p>The notion of "service" includes banking activities, credits, insurance, pensions, investments and payments.</p> <p>Under the law professionals must clearly provide the consumer with information relating to their identity (incl. their activity, third parties involved, competent monitoring authority), the financial services they offer (general characteristics, total price of the service, any offer's duration limit, ...) and compulsory wording relating to distance agreements.</p> <p>The professionals must clearly inform the consumer that the message has a commercial purpose and must receive the explicit consent from the consumer.</p> <p>In addition, professionals have to be clear about the contractual terms and conditions in paper format or on another durable medium available and accessible to the consumer in good time before the consumer is bound by any distance contract or offer.</p> <p>Finally, the consumer has a 14-days period during which he can freely withdraw from the contract without penalty and without giving any reason.</p>

2. Topic:	Intellectual Property
Where:	Luxembourg
What Happened:	<p>The new Benelux Convention on Intellectual Property (hereafter the "BCIP") has come into force on 1st September 2006, and, as a consequence, the Benelux Convention on Trademarks of 19 March 1962 and the Benelux Convention on Designs of 25 October 1966 has been repealed. However, the rights created under the "old" conventions still remain in force.</p> <p>The BCIP creates a new organisation: the Benelux Organisation for Intellectual Property (the "BOIP") which replaces both the Benelux Trademark Office and the Benelux Designs Office. The BOIP has now a clear international status and is independent from the three Benelux countries:</p>

	<p>Belgium, The Netherlands and Luxembourg.</p> <p>Another major change introduced by the BCIP is the abolition of the automatic preliminary search for previous registrations in the case of a trademark filling. Nevertheless, it is still possible for clients to ask for a preliminary search.</p> <p>As the BCIP replaces two different acts, it was necessary to carry out an in-depth reorganisation of the provisions in order to make it clearer and easier to read. The structure of the legal text has been changed as well as the numbers of the provisions.</p>
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3. Topic:	Decision on comparative advertising and parasitism
Where:	Luxembourg Court of appeal, 21st March 2007
What Happened:	<p>Tango, the mobile operator of tele2 in Luxembourg, is well known for its aggressive advertising campaign in Europe. Recently, Tango launched a campaign comparing its prices and services with those of "Poste & Telecommunications" (hereafter "P&T") the formerly publicly owned Luxembourg phone company.</p> <p>P&T had used the word "integral" to qualify its offer for an all-in-one package including phone/mobile phone/ADSL connection. The package was a large success among consumers in Luxembourg. Although the word "integral" was not a P&T registered trademark, it was clearly identifying the package of P&T in the public with specific colors and designs.</p> <p>At the end of the year 2006, Tango launched an advertising campaign under the name "integral+" in order to show that its all-in-one offer was broader than the offer of P&T. Tango used the same designs and colors as those used in the P&T advertisement. Tango also used a price comparison table clearly showing that its own offer was cheaper than the P&T offer.</p> <p>P&T decided to sue Tango for unfair competition as well as for misleading advertisement and for parasitism (taking unfair advantage of the investments of a competitor).</p> <p>On the <u>parasitism issue</u>, the Court decided that it was proved that Tango had taken an unjustified advantage from the investments and the efforts of P&T even if P&T had not registered the trademark "integral" given the expression was well-known among the public.</p> <p>On the <u>misleading advertisement</u>, the Court applied the law of 30 July 2002 regulating some commercial practices. This law includes 18 conditions that have to be fulfilled by a comparison advertisement in order to be legal (article 18(2) of the law). Among these conditions, the Court stressed the loyalty, the objectivity, the avoidance of misleading messages, the avoidance of negative opinions on a competitor product or service, the exact information.</p> <p>The Court decided that the Tango campaign did not fulfill these conditions since it did not mention some of the advantage of the P&T package (e.g. free installation). Tango did not mention some of the disadvantages of its own package (e.g. varying prices for the installation).</p> <p>Decision: The Court of appeal has condemned Tango to stop its advertisement campaign with a daily penalty EUR. 5,000.00 with a maximum of EUR. 125,000.00 starting one month after the notification of the decision. Tango was also condemned to pay the proceedings costs.</p>

4. Topic:	New law on the development of “internet highways”
Where:	Luxembourg
What Happened:	The law of 22 December 2006 on the construction of the “internet highways” has been passed. This law allows the government to determine a company which will be entitled to build, develop and manage an optical fiber network in Luxembourg.

5. Topic:	Double agreement between the Luxembourg Bank Association (ABBL), the copyright management company (SACEMLUX) and the Luxembourg Organization for Reproduction Rights (LUXORR)
Where:	Luxembourg
What Happened:	<p>Members of the Luxembourg Bank Association are now entitled to lawfully use copyrighted songs as a “waiting music” on the phone. (agreement with SACEMLUX)</p> <p>Members of the Luxembourg Bank Association can freely reproduce texts and images coming from the press in order to publish it on their intranet. (agreement with LUXORR)</p>