French Court Agrees with U.S. Anti-suit Injunction

After the *West Tankers* decision, common lawyers might have thought that continental lawyers had found the final support they needed to conclude that anti-suit injunctions are evil remedies and that they now have a license to chase them.

Well, that would not be true, as this judgment delivered by the French Supreme court for private and commercial matters (*Cour de cassation*) on 14 October 2009 demonstrates.

The dispute had arisen out of a distribution contract whereby a French company, In Zone Brands Europe, distributed children interactive beverage (see picture above) in Europe for an American corporation, In Zone Brands Inc. The contract included a choice of law clause which provided for the application of the laws of Georgia, and a choice of court agreement providing for the jurisdiction of Georgian courts.

When the American party terminated the contract, the French company and its director sued before a French commercial court (*Tribunal de commerce*) in Nanterre. The American challenged the jurisdiction of the French court, and initiated judicial proceedings in Georgia. In March 2006, the Superior Court of the Cobb county issued an anti-suit injunction enjoining the French parties to dismiss the French proceedings, and recognized the liability of the French party (the judgment of the *Cour de cassation* is unclear as to what this second part of the judgment really is, but it might have been a summary judgment).

The American party then sought a declaration of enforceability of the American judgment, that is, I understand, of both the anti-suit injunction and the summary judgment. As could be expected, the French parties argued that the anti-suit injunction infringed French sovereignty and their right of access to court as recognized by Article 6 ECHR and should thus be denied recognition. They could rely on a dicta of the *Cour de cassation* in the *Stoltzenberg* case, where the Court had ruled that, while Mareva orders could be declared enforceable in France, anti-suit injunctions could not, as they infringe the sovereignty of the jurisdiction

the courts of which are indirectly targeted by the injunction.

Last week, the *Cour de cassation* most surprisingly confirmed the declaration of enforceability of the American judgment. It held:

1. as the parties had agreed to the jurisdiction of the American court, the decision of the American party to sue before that court could not be considered strategic behavior (*fraude*).
2. there was no issue of being denied access to court, as the American court was ruling on its own jurisdiction and only enforcing a choice of court which had been agreed by the parties.
3. anti-suit injunctions are not contrary to public policy as long as they only aim at enforcing a preexisting contractual obligation, and no treaty or European regulation applies.

The case is not available online as of yet. Here is the most relevant part of the decision:

> *Mais attendu que l'arrêt retient exactement, en premier lieu, par motif propre, qu'eu égard à la clause attributive de compétence librement acceptée par les parties, aucune fraude ne pouvait résulter de la saisine par la société américaine de la juridiction expressément désignée comme compétente et, en second lieu, par motif propre et adopté, qu'il ne peut y avoir privation de l'accès au juge, dès lors que la décision prise par le juge georgien a précisément pour objet de statuer sur sa propre compétence et pour finalité de faire respecter la convention attributive de compétence souscrite par les parties ; que n'est pas contraire à l'ordre public international l'"anti suit injunction" dont, hors champ d'application de conventions ou du droit communautaire, l'objet consiste seulement, comme en l'espèce, à sanctionner la violation d'une obligation contractuelle préexistante ; que l'arrêt est légalement justifié ;*

UPDATE: see loose translation of Thomas Raphael here.