German Federal Supreme Court affirms Jurisdiction based on Art. 5 Nr. 1 Brussels Convention with regard to Claims based on Prize Notifications

The German Federal Supreme Court had to deal with the legal qualification of prize notifications, i.e. communications which are sent to consumers and give the impression that the consumer has won a particular prize, in its judgment of 1st December 2005 (III ZR 191/03). The Court held that jurisdiction concerning a claim based on a prize notification (sec. 661a German Civil Code) which did not lead to the order for goods can be grounded on Art. 5 Nr. 1 Brussels Convention. Before, the Federal Supreme Court has left open how sec. 661a German Civil Code has to be classified and has based jurisdiction on Art. 5 Nr. 3 Brussels Convention and Art. 13 Brussels Convention alternatively.

In the present case, jurisdiction over a consumer contract according to Art. 13 Brussels Convention (now: Art. 15 Brussels I Regulation) has been refused since this rule had to be interpreted strictly due to its qualification as lex specialis. Here, the requirements of Art. 13 I Nr. 3 Brussels Convention are – according to the Court – not fulfilled since a "contract for the supply of goods or a contract for the supply of services" has not been concluded. The Court regarded it not to be sufficient that the prize notification in question was directed at the arrangement of such a contract, but left open explicitly whether this interpretation also applies with regard to the broader Art. 15 I c) Brussels I Regulation. By refusing Art. 13 Brussels Convention, the Court departs from its former jurisprudence. According to the Federal Supreme Court, jurisdiction has to be based on Art. 5 Nr. 1 Brussels Convention since the term "contract" has to be interpreted widely in view of the ECJ´s case law according to which it is regarded to be sufficient if one person incurs liabilities voluntarily towards another person. Due to the affirmation of Art. 5 Nr. 1 Brussels Convention it could be left open by the Court whether jurisdiction could also be based on Art. 5 Nr. 3 Brussels Convention.

The full judgment can be found in IPRax 2006, 602 (including an annotation by *Jordans*, IPRax 2006, 582) as well as on the website of the Federal Supreme Court.