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Soulhier Bunch, Cabinet d'avocats d'affaires basé à Paris et Lyon

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Sudden termination of established commercial relationships: a succession of specific one-time contracts may characterize an established commercial relationship

On September 15, 2009, the *Cour de Cassation* (French Supreme Court) held that “*the qualification of established commercial relationships within the meaning of Article L. 442-6, 1, 5e of the French Commercial Code is **not conditioned by the existence of a permanent and continuous exchange** between the parties and that **successive specific one-time contracts may be sufficient** to characterize an established commercial relationship*”.^[1]

The facts of the case are as follows: a wine merchant had been participating in a professional tradeshow for several years at the “Foire de Paris” (Paris Expo). The tradeshow organizer decided to limit participation only to merchant-producers, cooperative wineries and wine importers, and notified the merchant thereof eight months prior to the next tradeshow announcement.

The merchant considered this decision caused him serious harm and initiated a lawsuit against the tradeshow organizer for the sudden termination of an established commercial relationship.

It is important to note that, as consideration for the payment of various sums, the tradeshow organizer provided exhibitors various services such as the reservation of a booth, a communications packet, year-long Internet services, promotional services, and insurance.

While the relationship between the parties was limited to the period during which the Foire de Paris was held, these services were provided to the merchant every year since the creation of his business, i.e. 13 years before. Further, the purpose of the services tied to this succession of contracts was identical, or virtually identical, from one year to the other and certain ancillary services were provided throughout the year.

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Given the **consistency, significance and stability** of the commercial relationship between the parties, the *Cour de Cassation* considered that “the victim of the sudden termination could reasonably anticipate a certain continuity of incoming business in the future with his business partner”.^[2] It therefore confirmed the decision rendered by the Court of Appeals, which had ruled in favor of the merchant.

In the past, the *Cour de Cassation* held that five orders placed in a period of six months following lengthy negotiations did not create an established commercial relationship. Rather, they proved a “specific one-time and non-continuous” commercial relationship.^[3]

More recently, the *Cour de Cassation* held that successive independent contracts that were **autonomous from one another in terms of purpose** did not constitute an established commercial relationship, reasoning that such contracts did not involve continuous business between the parties and provided no right of contract renewal.^[4]

The September 15, 2009 decision may appear to contradict the prior decisions. However, in reality, the *Cour de Cassation* completed its reasoning by specifying the characteristics of a true established commercial relationship (consistency, stability and significance of the relationship), and by affirming that, even in the absence of a framework agreement, an established commercial relationship may include **successive contracts with an identical purpose**.

[1] *Cass. Com., September 15, 2009, no. 08-19.200 (o. °772 F-PB), Sté Comexpo Paris v. Sté Christian Carbonnières*

[2] *Idem.*

[3] *Cass.Com., April 25, 2006, no. 02-19.557, unedited*

[4] *Cass. Com., December 16, 2008: JurisData no. 2008-046299; Bull. Civ.2008 IV, no. 207*

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