

# Betting-Law-News from France



An article by guest author, Thibault Verbiest, Law Firm ULYS, Brüssel/Paris

## ***The « Française des Jeux » sentenced for prompting persons aged under 18 to gamble***

In the legal framework of a bone of contention between the FDJ and the Syndicat des Casinos Modernes de France, the Court dealing with trade disputes pronounced, on the 12th of June 2006, a summary judgment that, on the rebound, gave new obligations to the FDJ regarding its site accessibility to surfers under 18.

The bone of contention comes from the publication, on the 11th of April 2006, of a press release on the FDJ, wherein the company claims that “its site is only accessible to French residents aged more than 18”, that “the weekly stake is limited (500 €)” and that “the gambler’s huge gains are directly paid into their bank account and not into a gambling account”.

The Syndicat des Casinos Modernes de France takes the matter to court, claiming the existence of an obvious illicit confusion “resulting from the unfair competition related to the misleading advertisement marring this press release, that says that “the (FDJ) site is only accessible to French residents aged more than 18” while surfers under 18 are allowed to consult it”.

In the summary judgment, the judges dismiss this argument. The Court points out that it is true that people under 18 are allowed to access the site, but they cannot participate in the advertised gambling.

The 11th of April press release, issued on the Internet, is

obvious advertisement. Its wording is ambiguous because readers may be misled on the extent of the site accessibility : they may believe that only people aged more than 18 are allowed to view it and gamble, while people under 18 may also view the site, even if they are not allowed to not gamble.

So the mistake induced by this ambiguity only regards the site accessibility, and not the services offered on site by the FDJ as it is certain that only people aged more than 18 are allowed to gamble.

The misleading advertisement targeted here consequently doesn't fall within the provisions of the L article 121-1 in the Consumption Code, since it doesn't affect any of the elements of the services concerned by the text, and in particular the "Terms of use".

Nevertheless, the Syndicat des Casinos Modernes de France doesn't stop here. It points out that the 17th of February 2006 Decree n°2006-174 forces, from now on, the FDJ (as well as the PMU\*) "to be watchful not to prompt people aged under 16 to gamble".

According to the judges, "it is obvious that the website notably aims to prompt the reader to gamble. Since it is accessible to people under 16, it prompts them to gamble notwithstanding the provisions of this text".

The Court consequently remarks that "the illicit opening of the website to people aged under 18 is a manifest disturbance for the Syndicat, considering that gambling amateurs reading the 11th of April press release may be misled on the FDJ legality of behaviour regarding people under 18, and so favour the FDJ services".

The judges thus command the FDJ to stop the diffusion of the press release during 6 months within a deadline of 24 hours following the notification of the summary judgment.

If this case only ends with a press release withdrawal, it will also have deeper consequences. The summary judgment may lead to understand that the FDJ website itself prompts people under 16 to gamble. An access control mechanism (known to be very difficult to implement, if we think of the existing jurisprudence in the field of pornographic sites) should be installed in order to limit the access of people under 18 to this message. It is very likely that this forthcoming obligation should eventually apply to each and every gambling and online betting website.