Master 2 Juriste international
et Master 2 International Business Lawyer (IBL)
NEWSLETTER n° 5
Faculté de droit - Toulouse 1 Capitole
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Les étudiants du Master 2 Juriste international et du Master 2 International Business Lawyer (IBL) de la Faculté de droit de Toulouse 1 Capitole et Madame Cécile Le Gallou, Maître de Conférences, vous proposent, régulièrement, une veille juridique en droit des affaires et droit des contrats, internes, européens et internationaux.

Au sommaire de la Newsletter :

Erratum : *le colloque du 27 février est organisé en partenariat avec le Comité des Jeunes Juristes de Midi-Pyrénées de l'Association Française des Juristes d'Entreprise et non le Comité des Jeunes Juristes d'Entreprise comme indiqué de manière erronée dans la précédente version de la Newsletter n° 5. Nous vous présentons toutes nos excuses pour cette erreur.*

Juriste d'entreprise et Privilège de confidentialité

L'Institut de Droit Privé et *Comité des Jeunes Juristes de Midi-Pyrénées de l'Association Française des Juristes d'Entreprise* vous convient à un ***colloque*** consacré au rapport du juriste d'entreprise à la confidentialité des affaires, le **vendredi 27 février 2015**, à la Faculté de Droit de Toulouse 1 Capitole (Amphi Isaac, Manufacture, Allée de Brienne, Toulouse).

En effet, le Gouvernement a déposé le 11 décembre dernier à l'Assemblée Nationale un projet de loi pour la croissance et l'activité, créant le statut d'avocat en entreprise (art. 21 al.1er). Ce dernier bénéficierait d'un privilège de confidentialité sur ses avis et productions. Ce statut serait, notamment, ouvert aux juristes d'entreprises ayant aux moins cinq ans d'expérience. L'avocat d'entreprise serait inscrit sur une liste du barreau *ad hoc*, il serait tenu de respecter tenu de respecter les principes déontologiques et éthiques de la profession, il réserverait l'exclusivité de ses prestations à son entreprise et il ne pourrait ni avoir de clientèle propre ni plaider.

Des universitaires, des avocats (français et anglais), des juristes d'entreprises ainsi que des décideurs politiques feront le point sur la situation et les perspectives des juristes d'entreprises dans leur relation à la confidentialité.

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The Court of Arbitration for sport « closes »

a two-window transfer for FC Barcelona

By ***Clément Blondelle***, étudiant M2 Juriste International, Université Toulouse 1 Capitole, fr.linkedin.com/pub/clément-blondelle/a8/533/a72/

Case : Court of Arbitration for sport dismisses Barcelona's transfer ban appeal, Lausanne 30 December 2014

Key-words : Court of Arbitration for sport, football, rules regarding the protection of minors

Facts : At the begining of last year, a Fifa (Fédération international de football association) investigation, centered on several players who were registered and played between 2009 and 2013, found that Barcelona was guilty of a serious infringment of the rules related to minor players, in relation to ten of them.

According to Fifa's regulation, players aged under eighteen can move to a club in a different country if their parents move for reasons which are not linked to football, if they are from another nation within European Union or European Economic Area and aged between sixteen and eighteen, or if they live within 100 kilometers from the club.
One of the young player who induced the investigation is actually a French boy from Colomiers, aged under 16 when he left US Colomiers fo FC Barcelona.
So in April, 2014, Fifa imposed as a sanction, over breaches of rules around the transfer of under 18 players, a two-window transfer ban in both young and professionnal players.
In conflict with this decision FC Barcelona made a statement to assure that *« in any way the club could share a resolution that is an affront to the spirit of our Masia, a world renowned example of academic, human and sporting education »*. The Masia allowed the outbreak of many great players for decades, and recently gave birth to Lionel Messi and most of the players of the national football team.
FC Barcelona's appeal was rejected by the Fifa in August, 19th, so the spanish club took the case to the Court of Arbitration for sport, in Lausanne, in an attempt to have the ban overturned.
According to its procedural rules, the Court of Arbitration for sport is competent whenever the parties have agreed to refer a sports-related dispute to the CAS. Obviously such dispute may involve matters of principle related to sport, or matters of pecuniary interests, or any other activity or matter connected to sport. The agreement may arise out of an arbitration clause, or by a reason of later arbitration, or may involve an appeal against a decision rendered by a federation or association, in this case the Fifa. For this case three arbitrators have been ajointed by both parties and the Court of Arbitration sport.

Solution : On December 30th of 2014, the Court of Arbitration for sport dismissed the appeal filled by FC Barcelona against the Fifa. Meaning that, the Court of Arbitration has confirmed the initial decision which had condemned FC Barcelona with a transfer ban period and a fine of 374 412 euros. This decision also confirmed the conviction of the Spanish FA. Indeed, it seems that FC Barcelona's practices regarding young players was in conformity with Spanish FA system. Thus, Fifa also fined the national association and gave it a year to regularise its regulatory framework and existing system concerning the transfer of minors abroad.
As a consequence, FC Barcelona cannot sign new players in January or summer

2015. Note that the Court of Arbitration has made its decision before the opening of the winter transfer period.
For FC Barcelona, 2015 will be year of savings, after four years of large spendings. Indeed, the spanish spent around 442 Milions of euros during the Zubizareta era. The sports manager was actually fired a few days ago, because of bad results mostly. Last summer, as an anticipation, FC Barcelona took advantage of the hold of the prohibition resulting from the appeal and bought seven new players for more than 150 Milions of euros.

La Chine introduit l'arbitrage international d'aviation

Par ***Piyapa SIRIVEERAPOJ***, Étudiante en Master Juriste International Université Toulouse 1 Capitole

A cette occasion, China Air Transport Association(CATA), International Air Transport Association (IATA) et la Cour internationale d'Arbitrage d'aviation de Shanghai (“SHIAC”) ont signé ensemble le contrat de coopération stratégique en termes d'arbitrage international de l'aviation. Ils ont annoncé que la Cour Shanghai International Aviation d'arbitrage ("SHIACA") et le Comité international de Shanghai Aviation arbitrage experts ("SHIAAEC") ont été officiellement établies. Cela signifie que système d'arbitrage de l'aviation internationale est officiellement établie à Shanghai, qui procurera une grande commodité et des avantages aux entreprises nationales et étrangères comme les résolutions des différends mondiaux .
Comme le volume de transport chinoise de l'aviation civile se est classé deuxième place dans le monde depuis 2005. Shanghai devient un centre économique international, un centre financier, un centre commercial et un centre d'expédition et le transport aérien. L’établissement d'un centre d'expédition internationale est l'une des tâches les plus essentielles. Dans le même temps, Shanghai a accordé sur le développement de la zone de libre-échange, qui contribuera à developer Shanghai en un centre de transport maritime international et d'un pôle aéronautique.
Par consequent, l’arbitrage a des avantages inhérents à l'aviation règlement des différends, car il est flexible, confidentiel, autonome, professionnel et exécutoire. En ce qui concerne les différends entre les compagnies aériennes et les aéroports, les pétrolières et entreprises de restauration. Cependant, la Chine ne permet encore arbitrage institutionnel. En conséquence, de nombreuses entreprises de l'aviation civile doivent aller à l'étranger pour un arbitrage ad hoc ou déposer une plainte devant les tribunaux nationaux, ce qui est très coûteux et de temps consommer. Avec la création de SHIACA, il y aura des communications efficaces et les connexions entre les règles d'arbitrage nationaux et internationaux offrant. Ainsi les résolutions à la reconnaissance et l'exécution des sentences arbitrales. Avec la coopération stratégique de trois parties, SHIACA ne ménagera aucun effort pour promouvoir Alternative Dispute Resolution de l'aviation. SCATA et IATA ont promis de recommender SHIACA à leurs membres comme un organisme de règlement des différends. Les trois parties se impliquer SHIACA dans les clauses de règlement des différends de leur norme chinoise et les accords internationaux.
En tant que premier organisme d'arbitrage au monde spécialisée dans l'aviation civile, SHIACA favorisera la développement de l'arbitrage de l'aviation internationale, et aider à construire un Shanghai international et de l'environnement d'affaires axé sur le marché en vertu de la règle de droit. Et cette creation a crée un nouvel horizon pour l'industrie des services juridique chinoises. Toutefois, les possibilités apporte

egalment des défis. Les problèmes tels que la forte augmentation des cas d'arbitrage et de gagner la confiance des partis arbitrales seront les problèmes importants à l'avenir. Basé sur les rapports actuels, si SHIACA sera une entité indépendante reste un question pour nous. La préoccupation du public combien il peut changer la traditionnelle chinoise modèle de l'arbitrage, comme si elle apportera de nombreux concepts d'arbitrage international, comme la consolidation de l'arbitrage et si elle peut offrir une nouvelle plateforme pour résoudre le les différends d'indemnisation des accidents de l'aviation sur la base de contrats. Cependant, on pense tout seront répondues par la pratique future de ces questions.
La Chine a officiellement introduit l'arbitrage international d'aviation, ainsi la Cour internationale d'Arbitrage d'aviation de Shanghai a été inaugurée le 28 août à Shanghai.

Legislative proposal on privacy and commercial use of unmanned aircraft systems provides potential roadmap for regulation

By ***Hajar CHNOUKI JARDIM***, student in Master 2 International Business Law,
https://www.linkedin.com/profile/view?id=223463725&trk=nav_responsive_tab_profile

Summary of the paper by Hogan Lovells, Harriet Pearson, Timothy P. Tobin, E. Tazewell, Ellett and Michael J. Bell (December, 23 2014)

Key words : UAS, bill, privacy regulations, collected data

The term unmanned aircraft system (UAS) emphasizes the importance of other elements beyond an aircraft itself. A typical UAS consists of the unmanned aircraft (UA) ;control system, such as ground control station (GCS) control link, a specialized datalink; and other related support equipment. The term UAS was since adopted by the United States Department of Defense (DOD) and the British Civil Aviation Authority (CAA).
According to Senator Jay Rockefeller's recent draft bill, privacy regulations should be imposed on users of civil (non-military) UAS. The unmanned aircraft systems privacy act of 2014 would require the federal trade commission (FTC) and department of transportation (DOT) to draft regulations enjoining a prior consent of the individuals filmed or photographed allowing civil UAS for surveillance purposes. Furthermore, the draft bill would protect the collected data through reasonable measures.
The draft bill's purposes go beyond that. It would require each privacy policy to state how every collected data (images, data, information...) shall be used. This statement would have to deal with the circumstances (such as location, duration, altitude...) under which the UAS would be operated, as well as the used technology (cameras, infraredsensors...), the taken measures to anonymize the collected data, to limit its use to what is necessary, and finally, the methods that a subject could use in order to obtain a copy of the collected information or, revoke prior consent granted.
Furthermore, the draft bill would prohibit the weaponization of civil UAS as well as directing the Department Of Defense to issue regulations allowing individuals to remotely identify the civil UAS.
Finally, it would allow an enforcement of federal standards through state attorneys general's actions and to invade privacy if the Act is to be violated.

Fabrication des substances actives des médicaments à usage humain

Règlement délégué (UE) n° 1252/2014 de la Commission du 28 mai 2014 complétant la directive 2001/83/CE du Parlement européen et du Conseil à propos des principes et lignes directrices de bonnes pratique de fabrication des substances actives des médicaments à usage humain.

Par ***Steven Boyd***, étudiant en M2 IBL

Dans ce règlement de la Commission du 28 mai 2014, applicable à partir du 25 mai 2015, il s'agit d'établir les principes et lignes directrices dans un acte juridiquement contraignant. Ces principes doivent recouvrir l'ensemble des aspects, opérations et processus qui contribuent à déterminer la qualité des substances actives dans les médicaments à usage humain. Effectivement, l'objectif est d'obtenir des substances actives de qualité. A cet égard, un certain nombre de mesures sont prévues concernant la gestion de la qualité, les installations, les contrôles des différentes opérations, parmi d'autres.

En effet, les fabricants sont tenus de gérer efficacement la qualité des produits grâce à un système spécifique. De même, le personnel doit respecter un certain nombre de règles d'hygiène et de salubrité afin d'assurer la qualité de la substance active. Cela veut aussi dire que les personnes concernées par le processus de fabrication doivent utiliser impérativement certaines installations, équipements et procédés conçus pour minimiser le risque de contamination.
La mise en place d'un système de documentation et de procédures permet aussi d'assurer la gestion du processus de fabrication ainsi que la gestion des matières. Le règlement prévoit l'existence de plusieurs contrôles vis-à-vis de la production, de la fabrication et du laboratoire ainsi qu'un système de validation des procédures afin de contrôler chaque étape du processus et de garantir la conformité de la substance active aux spécifications de qualité et de pureté exigées. Dans le cas d'une éventuelle modification du processus de fabrication, un nouveau contrôle devrait intervenir pour évaluer les effets potentiels sur la qualité de la substance. Bien entendu, tout lot ne satisfaisant pas les spécifications établies est refusé et par conséquent mis en quarantaine. De plus, en cas de rappel de la substance, le fabricant doit informer les autorités compétentes sur une éventuelle menace pour la santé publique.
Toutes ces mesures prévues par le règlement n°1252/2014 ont effectivement pour objectif de garantir la qualité de la substance active des médicaments à usage humain et pallier le problème des disparités entre les législations nationales, ce qui facilite le fonctionnement du marché interne de l'UE.

European Commission Published Latest Pharma Pattent Settlement Survey but, legal Position still Unclear

Par ***Julian OJARIAS***, étudiant en M2 IBL

Key word : pharmaceutical patent, competitive law, agreements, European Commission, TFUE

The European Commission started in 2009 an inquiry about illegall practices in the pharmaceutical market. Indeed the EC entered into war against settlements that limit generic entry into the European market. Such pharmaceutical settlement agreements are concluded between a laboratory who owns a medicine's patent wich is going public and other laboratories who are willing to produce generics. The originators company pays the generic company in order to prevent or delay the arrival of a generic medicine.
On December 5 2014 the EC published its latest report about this thorny issue. It appears that the vast majority of pharmaceutical settlement agreements (some 92 percent) are prima facie unproblematic in competition law terms. The EC says this shows the industy's increased awareness of potentially problematic practices.
In the past the EC has condamned a Danish pharmaceutical company, Lundbeck, for agreeing to delay the market entry of a cheaper generic version of one of its medicines. The EC also punished the French laboratory Servier and five producers of generic medicines for concluding a series of deals all aimed at protecting Servier's medecine from price competition by generic.
However those cases have been appealed in front of the the European Court of Justice and there is no correct legal position until the court renders its verdict
This issue is getting more and more relevant because this kind of practice can happen in any sector. Therefor a clear legal position needs to be settled in order to protect the European market against violation of its competitive law.
Reminder :
article 101of the TFEU : . The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
(b) limit or control production, markets, technical development, or investment;
(c) share markets or sources of supply;
(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
Article 102 of the TFEU : Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States. Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
(b) limiting production, markets or technical development to the prejudice of consumers;
(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Pharmaceutical invention and the employee

Par ***Mélissa GALARRETA*****,** M2 Juriste international**,** Faculté de droit de Toulouse 1 Capitole**,** fr.linkedin.com/in/melissagalarreta1

Cass. com., 9 déc. 2014

The decision we are analysing was held in front of the commercial division of the Court of cassation on 9th december 2014.

M.X, an employee of a pharmaceutical company, Clintec international. He participated in the realization of various inventions have, in particular, resulted in three PCT patents, in which he was named as inventor or co-inventor.

He was hired by the company, after Clintec international was the subject of a merger international by Baxter international.

M.X is based on the provisions of article L611-7 of the Code of Intellectual Property and assigned his employer (Baxter international and Baxter heathcare) so that these inventions and their extensions are described as off-task inventions attributed to him and is allocated a certain amount under the fair price or, alternatively, an additional remuneration.

The Paris Court of appeal rejected his requests, so M.X has appealed.

The Court of cassation approved the Court of appel regarding to the classification of the disputed inventions mission inventions.

It considered that in this case M.X hasn't got only administrative functions and a management role, but he had also to meet a goal of innovation and, in particular, to patent inventions and ensure the quality and reliability of the manufacturing process of the product. So, in this case the inventions were made in the context of studies and research explicitly entrusted to the employee by his employer, the inventions were mission inventions.

Thus, M.X was not entitled to the payment of a fair price.

Then, the Supreme Court approved the decision of the Court of appeal which held that under the employee's contribution and interest of inventions industrially and commercially, the additional remuneration received was sufficient .

However, the Court of cassation censured the judgment regarding the articles L611-7 of the Code of Intellectual Property and L1224-1 of the Labour Code.

In fact, according to the Court of cassation, the Court of appeal did not answer to the question of the existence or not of a transfert of sector. If the Court of appeal decided that M.X was the employee of Baxter company, so M.X would be entitled to invoke these articles.