

E-Newsletter

December 2010

Ortolan
Legal Ltd



Your latest commercial legal update from Ortolan Legal, the virtual in-house law firm

Hello Nicholas. As the festive season draws near, our newsletter includes a couple Christmas themed articles and also provides a few helpful hints on some of the ways to get rid of those unwanted Christmas presents....

Equality Act at Christmas

Bah humbug.....

With the advent of the Equality Act 2010, the majority of which came into force in October this year, it is expected that there might be a sharp increase in the claims employers face for discrimination. Combined with the increase in employment tribunal cases, as reported previously, it might be wise, therefore, for employers to be extra vigilant at Christmas against the possibility of discrimination claims. However, a firm of care homes in Devon has recently been reported for its disproportionate attempt to prevent any actions being taken against it. Guinness Care and Support usually pays staff extra for working on Bank Holidays, including Christmas Day and Boxing Day. However, to promote equality and diversity in the workplace, this year the company has refused to pay any extra bonuses as both days fall on a weekend. As the move has been criticised, it may herald claims similar to the recent case against British Airways by a Christian employee who was prevented from wearing a cross. Not least, complaints have already been raised on the grounds that Britain is predominantly Christian and that this act, itself, could constitute religious discrimination.

Returning Consumer Products

We three kings of Orient are....

As Christmas approaches, it is inevitable that, on the day, many people will receive unwanted gifts, with little idea of how to return them. Recently published guidance from Which? can help in a practical, as well as legal way. Advice is targeted at the purchaser, as much as the recipient, with common sense suggestions like retaining the receipt for any gift. This is often the starting point for a claim against a retailer, because proof of purchase is fundamental in establishing a contract of sale. Other advice centres around the retailer's return policy and the use of exclusion clauses, such as "no refunds", which often prevent an item from being returned. With the increase of electronic purchases, it is important to check whether postage and package will be refunded. Often this is only refundable if an item is defective and not simply an unwanted gift. In addition, sealed items, such as DVD's and computer games, are usually non-refundable once the seal has been broken. Finally, the advice is to know your rights and, ultimately, always choose your gifts with care...

Price Fixing

Oh Tannenbaum...

Throughout Europe, as in the UK, anti-competition laws are strictly enforced to prevent price fixing and encourage competitive pricing for consumers. A Danish organisation for producers of Christmas trees has been heavily fined for breach of a Danish law which operates in a similar manner to the UK Legislation. The organisation had effectively given price recommendations to members through the illegal exchange of information. It supplied price statistics and price calculation models to its members, in such a way that members were told how to set prices and minimum prices. This of course discourages healthy competition and could mean consumers paying more for their Christmas trees. In 2009, the organisation was fined the equivalent of approximately EUR 26,700, with the managing director of the organisation fined personally as well for his conduct. In summer this year, an appeal was heard and the fine was raised to approximately EUR 67,000. Despite mitigating factors, the appellate court may have thought that price fixing of Christmas trees clearly wasn't acting in the Christmas spirit.



Ortolan Legal Seminars

Many thanks to all of you who attended our seminar last month in London on the subject of redundancies and reorganisations. We hope you enjoyed it and found it a worthwhile and thought provoking hour or two.

Our series of seminars continues in 2011 with planning in progress for two more in the Midlands and the North-West as well as a further seminar in London. If you would like to register for any of these, please e mail cwarburton@ortolanguroup.com to reserve a place.

Ortolan Legal is a radically different law firm providing pragmatic and commercially focussed legal advice. We are all experienced in-house lawyers, based remotely so overheads are kept to a minimum. Our pricing structure is entirely flexible; we will adopt your preferred structure and simply ask to earn a fair margin for our work. We don't charge administrative costs. Dealing with ad hoc work or retainer work, we can assist where there is no in-house legal function and also provide holiday cover or supplement existing in-house legal teams. Our work covers non-contentious company commercial and employment law, contracts, tendering, purchase, supply, distribution, franchising agreements and pre-litigation reviews. We also provide general 'Legal Health Checks' and a 'Legal Hotline' offering legal support for a set number of hours each month.

Happy holidays...

If you require any advice in connection with the content of this bulletin, or on any other issues, please contact Claudia Gerrard on 0844 5611 638 or e-mail her at cgerrard@ortolangroup.com

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