

## **Consumer Protection Case Study**

*In August 2008, a consumer purchased a water bed at € 1 265 from a business enterprise by distance contract entered into by email. The business, in its email, which contained the complete instruction regarding the consumer's right of withdrawal, also advised the consumer as follows:*

*“With a view to our above mentioned instruction regarding your right of withdrawal we additionally inform you that filling the mattress of the water bed regularly leads to a deterioration since the bed can then no longer be sold as new.”*

*The bed was delivered, the purchase price paid in cash on delivery. The buyer assembled the bed and filled the mattress with water. Afterwards, he exercised his right of withdrawal. The seller only reimbursed an amount of € 258 claiming that the bed could no longer be sold and thus only the heating with a value of € 258 could be used.*

Case based on the judgement of the Bundesgerichtshof (Federal High Court – “BGH”) of 3 November 2010 – VIII ZR 337/09

### **Section 357 (3) of the German Civil Code (“BGB”) as effective until 12 June 2014 states the following:**

The consumer, ..., must pay compensation for value for any deterioration caused by putting the thing to its intended use, if, at the latest when the contract was entered into, his attention was drawn in text form to this legal consequence and to a possibility of avoiding it. ...Sentence 1 does not apply if the deterioration is exclusively due to examining the thing. ...”

### **Questions for discussion:**

1. How do you think the court has decided based on the values stressed by the EU legislator?
2. What is the business ethics aspect of the case?
3. Do **you** think consumer protection is warranted in this situation?
4. Do you see possibilities for a smart consumer of taking advantage of the law?
5. How should the law protect the business against unethical behavior of the consumer?
6. What other aspects come to your mind?