Hans-W. Micklitz
Cross-Border Consumer Conflicts – A French-German Experience

ABSTRACT. The paper informs about and analyses the interim results of a joint initiative of European consumer associations to combat misleading marketing practices originating in Germany and directed towards French consumers. The traditional enforcement mechanisms have so far been unable to provide adequate remedies for cross-border complaints which will occur with more regularity the closer the internal market of the EC comes to completion. The author discusses strategies to take action against the tortfeasor in the country where the wrongful practices originate, rather than, as provided for by the traditional conflict rules, at the place where the injury occurs.

The German Verbraucherschutzverein (VSV – the Consumer Protection Association) is, in collaboration with the French Union Féderale des Consommateurs (UFC) and the EC-based Bureau Européen des Unions des Consommateurs (BEUC), trying to get to grips with misleading cross-border advertising by German based distance selling firms who address French consumers, in French, by mailshots from German territory. In France, the French consumer organization sued the German firm under criminal law by way of the so-called "action publique" (Calais-Auloy, 1992, p. 381). UFC obtained a decision of the criminal chamber of the Tribunal de Grande Instance de Paris on 2 October 1991.[1] Since then UFC has been trying to execute this decision in Germany.

The second initiative of UFC is based on the revised French law of 1988 by which French consumer organizations have been entitled to file a law suit, i.e., to ask for an injunction order against unfair and misleading practices under civil law (Calais-Auloy, 1992, p. 392). French consumer organizations are no longer dependent on the activities of the public prosecutor, they are now free to decide on their own, within the limits of the new law, against whom they want to file an action ("action en cessation"). UFC has asked for an injunction order against a German based distance selling firm, called "Direct Shopping." The Cour d'appel de Nantes has decided the case in favour of UFC,[2] which will have to execute the French decision in Germany.

The French undertakings encounter many problems on both sides

Journal of Consumer Policy **16**: 411–434, 1993.

of the border, both in France and Germany. It seems easier and much more effective to sue the German-based distance selling firms in Germany, in order to stop the mailshots which have to be regarded as unfair or misleading. Again two possibilities exist: UFC can file a lawsuit in Germany and/or VSV can sue the German distance selling firm in order to protect the French consumer.

This paper concentrates on the role of VSV. It begins with an analysis of the so-called "Kaffeefahrten (coffee excursions)" which first started in Spain (and therefore are also called "Spanish excursions"). It is precisely here that VSV collected experience in the applicability of group action in cross-border consumer conflicts. Any VSV attempt to outfight the direct selling firms will be measured and assessed against the legal handling of the so-called "Spanish excursions." This handling forms the operative basis for VSV's mandate to sue the German selling firm which is sending its mailshots all over France. There is, however, one important difference which has to be considered: In the "Spanish excursion" cases, the task of VSV was to protect German consumers in Spain; in the direct selling cases the mission is to protect French consumers against risks which have their origin in Germany. That is why the question of standing, which did not play a role in the "Spanish excursion" cases, will become a crucial point in the distance selling cases (Reich, 1992c).

THE LEGAL BACKGROUND – VSV AND THE SPANISH EXCURSION CASES

There is an intense and controversial discussion on the extraterritorial applicability of German law on doorstep sales (for more details, see Coester-Waltjen, 1991; Ebke, 1991; Hoffmann, 1992; Jayme, 1990; Kothe, 1990; Lüderitz, 1990; Reich, 1989, 1992a; Taupitz, 1990).

The cases concern "Kaffeefahrten" in Spain, Italy, or Turkey. The circumstances are more or less similar. German consumers who are on holiday in one of these countries or who are taken to one of these countries are offered German goods for sale in the context of an organized tour to which in theory the German Act on Doorstep Sales, based on EEC Directive 85/577 of 20 December 1985,[3] would apply. However, the contracts which were concluded provided for the applicability of Spanish or Italian law, countries in which the EEC Directive had not been transformed into national law at that time.[4]

Back home, the consumer tried to withdraw from the contract with reference to the German Act on Doorstep Sales. The supplier rejected the consumer's demand by referring to the applicability of Spanish or Italian law. It is not possible and not feasible to present here the whole range of variations which have come up in quite a number of cases.

The main argument brought forward to support the applicability of German law referred to the fact that the person who was "selling" the product was no more than a representative of a German-based firm. It was the German-based firm which delivered the product to the consumer and it was the German firm which sued and still is suing the consumer in the event of non-payment of the goods ordered in Spain, Italy, or any other country. Individual complaints by consumers brought this behaviour to the attention of VSV. The latter filed two group actions against the German firm which was considered to be behind the marketing technique in Spain, Italy, or Turkey, one under the Act against Unfair Competition (UWG), the other under the Standard Contracts Art (AGBG) – and it lost both cases before the German Federal Court (Bundesgerichtshof).[5] The main problem for VSV had turned out to be difficulties in proving the existence of close commercial connections between the German supplier and the Spanish/Italian reseller.

Below the level of group action, there are a number of cases initiated mostly by the German firms who are suing the consumer for payment. That is why most of the cases concern questions of contract law, with the notable exception of VSV's group action under § 13 UWG. The legal issues at stake under contract law are not directly attributable to unfair advertising. Indirectly, however, there is a close legal link. Whether it is the "travel tour" or the "cross-border mail-shots," unfair and misleading advertising always precedes the conclusion of a contract. Legally speaking, the courts have to deal with the law applicable to a contract within the context of unfair competition law. And it is by no means clear what kind of argument the German courts will accept, once VSV has filed an action against "Direct Shopping." It is exactly this uncertainty which makes it so important to look at the individual "Spanish excursion" cases, although specific attention will be given to the group actions of VSV.

STANDING OF VSV IN PROTECTING GERMAN CONSUMERS OUTSIDE GERMAN TERRITORY

VSV has never before tested the reach of its competence outside German territory. Neither the appellate courts nor the Federal Court challenged VSV's standing in protecting German consumers against risks in Spain, Italy, or Turkey. Standing was not even discussed. This might be due to the fact that VSV had sued a German firm in Germany and that the victims were Germans. The question of standing came up, however, in a different context. VSV's intention was not so much to test its standing, but to test the reach of German law on doorstep sales outside Germany, both under the Act against Unfair Competition and under the Standard Contracts Act. That is why VSV did not even argue that the behaviour of the tour operator violated Spanish law. The Federal Court's short *obiter dictum* at the end of the decision makes clear that VSV's standing would not automatically cover the competence to refer to the applicability of foreign law under the group action.[6] The Landgericht München has recently decided that the standing of associations who are entitled to file a group action under § 13 UWG covers only the right to oppose violations under the German Act against Unfair Competition.[7] The case in question concerns mailshots undertaken by "Chance Vertrieb." It is a Mr. Haßloch, well known to French and German consumer organizations from the "Direct Shopping" case, who stands behind this firm. The plaintiff is the DSW (Schutzverband gegen Wirtschaftskriminalität) which together with VSV is the most powerful organization in charge of the group action under § 13 UWG. The decision of the Landgericht is on appeal before the appellate court of Munich and it is quite certain that the case will be brought to the Federal Court.

The Legal Debate on the Applicability of German Law on Doorstep Sales to the Spanish Excursion Cases

In legal doctrine, there are about a dozen court decisions, amongst them two by the German Federal Court, and a very complex discussion on the extra-territorial effects of German law on doorstep sales. The Federal Court has not yet really taken a position, neither under the Unfair Competition Act, nor under the Standard Contracts Act. In the first case the Federal Court referred to the "Marktwirkungsregel" according to which the law that should apply should be that of the

country in which the effects of the unfair advertising are felt. The Federal Court recognized Spain as the country in which the advertisement was effective, because the contracts were concluded in Spain. The Federal Court did not consider the assumed commercial relationship between the German supplier and the Spanish representative as having been proved. Preparatory measures as well as the delivery of the goods, both definitely undertaken in Germany, did not – according to the Court – justify the applicability of the German law.[8]

In the second case, the Federal Court set aside the extensive discussion undertaken by the Landgericht (LG – regional court) and the Oberlandesgericht (OLG – appellate court), as to whether German law or Spanish law applies.[9] The Federal Court simply decided that the German firm which supplied the products ordered in Spain could not be regarded as being responsible for the unfair contract terms which were used by the Spanish tour operator.[10] Again VSV failed because it was impossible for it to prove the dependence of the Spanish tour operator on the German firm. It is remarkable to see that so far the Federal Court has not been willing to dig into private international law, neither in relation to the Act against Unfair Competition nor in relation to the Standard Contracts Act.

It is helpful to look at the case law of the lower courts, not only in the group action decision, but also in the individual cases. Such an examination demonstrates a more promising approach to the protection of the German consumer. Lower courts discuss extensively the German law on conflicts (EGBGB) as revised after the adoption of the Rome Convention.[11] The decisions of appellate or regional courts do not indicate, however, a common solution, not even a common trend. Lower courts are not used to applying the law on conflicts, and even the courts of appeal are not really accustomed to the sophisticated mechanisms built into the law on conflicts. This might help to explain the uncertainty of the courts in shaping the content of the rules which might be referred to. All in all, however, the courts take a very pragmatic, refreshing approach, which runs counter to the complex legal doctrine in the hands of lawyers. Again, there is no space or need here to discuss the reasoning in detail. The presentation follows the main lines of arguments and it demonstrates that consumer organizations which take the initiative in cross-border conflicts will have their work cut out to set up a coherent legal solution. This analysis focuses on contract law, but one has to keep

in mind that the background issues are similar to what is at stake in cross-border advertising.

1. Art. 27 EGBGB submits contracts to the law the parties have explicitly chosen. Astonishingly enough the courts do not really discuss the problems which result from cases in which the "agreement" of the applicability of Spanish or Italian law is part of standard terms. The courts have – grosso modo – no difficulty in assuming that the consumer has made a choice in the real sense of the word. Art. 27 para III EGBGB enables the courts to reject the applicability of the chosen law if the contract does not have any extra-territorial link at the moment the contract is concluded beyond the mere fact that the parties have agreed on the applicability of a foreign law. Here the crucial question is. Who are the contracting partners? Some courts are willing to recognize the German supplier as the contracting partner of the consumer. Following this interpretation, the contract is not "concluded" in Spain or Italy, but in Germany at the time when the supplier confirms the conclusion of the contract in a written letter to the consumer.[12]

2. Art. 28 determines the applicable law if the parties have not made any agreement. Here the law which applies is that of the country to which the contract has the closest relation ("engste Verbindung"), Art. 28 para II. The OLG Stuttgart applied German law because all relevant activities lead back to German law: advertising, the conclusion of the contract, and the delivery.[13]

3. Art. 29 EGBGB is, in theory, the most important provision because it restricts the parties' freedom, under Art. 27 EGBGB, to agree on the applicability of foreign law. It states that German law applies when the consumer is taken to a country in which he orders the product and when the supplier has initiated the travel tour in order to make the consumer conclude the sales contract, Art. 29 para I No. 3. The problem is whether this rule applies because the consumers are normally not taken to Spain and Italy just for the purpose of selling them goods. Consumers tend to be already in the country where the excursion is organized, on holiday. Some courts, supported by important voices in the legal doctrine, plead for an analogous application of Art. 29 para I No. 3. The circumstances are said to be similar if the consumer is invited while in Spain and Italy to undertake such an excursion.[14]

4. Art. 31 must be read in connection with Art. 27 EGBGB. There are, precisely speaking, two kinds of contracts to be distinguished: one

on the applicability of the chosen law, the other one is the sales contract itself. Art. 31 para I states that the decision whether or not a contract has been concluded must be taken on the basis of the law on which the parties have agreed. That would have been, according to the German courts, Spanish law. Art. 31 pare II provides for an important exception which might gain importance in consumer contracts. The consumer could claim the applicability of German law – hence the applicability of the Act on Doorstep Sales – because he has not been willing to bind himself definitely to what he has said or signed in the context of the travel tour undertaken in Spain or Italy.[15] Here the consumers' freedom to choose the applicable law is re-instated and the philosophy behind the German Standard Contracts Act is re-introduced. The conclusion will be that a choice of law in standard terms, though valid under Art. 27, does not apply because Art. 31 para II allows for a correction (Reich, 1992a, p. 191; Taupitz, 1990, p. 642).

5. Art. 34 makes clear that no agreement on the applicable law may set aside mandatory rules of German law which shall apply independent of the applicable law. The question is whether the Act on Doorstep Sales comes under Art. 34. It presupposes that the Act claims international applicability, a consequence which is usually denied by the courts, sometimes whilst referring to the position of the German Government which has accepted the right to withdraw only under pressure from a particular EEC directive.[16]

6. Art. 6 EGBGB formulates the "ordre public." Only two lower courts have been willing to interpret the Act on Doorstep Sales as being part of the German ordre public.[17]

7. § 12 of the German AGBG formulates the requirements under which German law applies even though the contract is submitted to foreign law:

– the contract must be concluded due to a public offer, a public advertisement, or a commercial activity of the supplier who makes use (Verwender) of the standard terms within the jurisdiction of the AGBG,

– the consumer has his domicile or his usual place of living within the jurisdiction of the ABGB at the moment he accepts the offer.

The wording of § 12 makes clear that its applicability will depend to a large extent on the concrete circumstances, i.e., on who has concluded a contract, as well as when and where it has been concluded. A key role is played by the meaning given to "Verwender," i.e., to the supplier who uses the standard terms outside Germany. There

has been a group action under § 13 AGBG in which exactly this question has been discussed at length. VSV has sued a German supplier for having forced a Spanish enterprise to use unfair standard terms on sales tours in Spain. The German supplier, according to this argument, must be treated as a "Verwender" (user) under the AGBG, because he must be seen as responsible for formulating the standard terms. Whereas the LG Frankfurt[18] and the OLG Frankfurt[19] took a broad notion of "Verwender," thereby making the German supplier liable for the use of the (his) standard terms in the context of a Spanish sales excursion (Kothe, 1990), the Federal Court quite to the contrary narrowed the applicability of the AGBG down to situations in which the contract is concluded in Germany. Such a reading might be contrary to the Rome Convention, because the characteristic performance of the supplier under Art. 28 cannot be treated differently from the notion of "Verwender" under the German AGBG (Reich, 1992a, p. 192).

8. Direct and horizontal applicability of the Directive on Doorstep Sales has been considered as one – perhaps the most elegant – possibility of getting out of the situation (Reich, 1992b, pp. 881–883).[20] The courts, however, did not really refer to the discussion under EEC law of whether such a direct horizontal applicability is feasible, and they have not referred the case to the European Court of Justice (ECJ).

9. Last but not least, there exists the possibility of accepting the applicability of Spanish law to declare the choice of law void because it violates Spanish consumer laws and to allow for the annulment of the contract or simply the rejection of the consumer's defence.[21]

VSV'S LAWSUIT AGAINST A GERMAN DISTANCE SELLING FIRM

It is not so much a legal analysis that can be offered here but a description and an analysis of the barriers VSV has to cross before it can bring a case to court. European integration is dominated by legal technicalities, by language barriers, and by misunderstandings which make joint efforts of consumer organizations difficult.

The Preparation of the Case

The German firm "Direct Shopping" seemed to be an appropriate

candidate for a lawsuit. A first examination ascertained that from a German perspective it would be necessary to learn more about the origin of the advertising. An important difference appeared between French law and German law on unfair and misleading advertising. German law requires VSV to demonstrate before the courts that consumers have been the victim of the mailshot campaign, whereas under French law it suffices to pinpoint the abstract risk resulting from unfair and misleading advertising without consumers being damaged or in a more modest way, being concerned. It took a couple of months before these problems were overcome and before the lawsuit could be filed.

The identification of "Direct Shopping." The pragmatic problem was to identify the responsible person/firm behind the advertisement. The mailshots gave a post office box number as the only address, which is legally permitted under German law, but not under French law. The envisaged directive on distance selling might entail a change of the German law.[22] VSV undertook the task of finding out the address by a request addressed to the German Bundespost. Already the identification was seen as a success. "Direct Shopping," however, seems to have been registered under a new commercial name of "Globe Marketing," and it could well be that the preparations to sue "Direct Shipping" might fail, because the relevant economic agent has changed. At the time of writing VSV has approached the German Bundespost in order to identify who is behind "Globe Marketing."

Identifying the advertisement as being a violation of German law. Explicitly and implicitly VSV set out with the assumption that the UWG should be applicable to the mailshots. To this end VSV referred back to the experience it had gained in the excursion cases and put emphasis on the investigation of the necessary facts. The overall idea was to identify a clear and unequivocal violation of German unfair competition law. The lawsuit should not fail simply because the violation could not be demonstrated to the satisfaction of the German court. The first step in identifying the violation was to translate the advertisement into German so that VSV could start working on it. VSV itself has no translation facility which would allow it to elaborate or even prepare the case. Having to get this translation done shows how language difficulties slow down the procedure beyond the mere fact that VSV has to file a lawsuit on the basis of information it cannot

recruit itself, but for which it must rely on the French consumer organisation, UFC.

VSV has received through BEUC a set of advertisements translated in October 1992. These advertisements were regarded by UFC has a blatant violation of French law. An internal note prepared by VSV revealed, however, that the advertisements submitted did not represent a breach of German law. The mailshots contained five categories of claims, each of which might be misleading:

(1) the allegation that title was already reserved to the consumer supposedly having won a car;

(2) the presentation of a voucher for the reservation of a product to the consumer;

(3) the communication that a product has been reserved for the consumer;

(4) an official voucher for the selection of a prize;

(5) an official communication of a prize.

VSV called into question whether the advertisements had misleading effects as regards the first four categories. Setting aside the differences between the categories, the overall assumption was that the advertisements indicated clearly enough that the consumer should join a game whereby he or she could win a prize. Fraudulent advertisement, however, would require that the consumer be given the impression that he had already won a prize. Under German law the only possibility of getting out of the difficulty is to provide evidence that consumers have been misled. The fifth category was understood to be the most promising ground for a law suit. Here a specific prize was guaranteed as remuneration for participating in a test game, provided that he or she had paid the required sum, such as FF 79.

In order to discuss VSV's note and the problems VSV had in accepting the mailshot documents obtained from BEUC/UFC as misleading under German law, a meeting was held on 16 December 1992 in Berlin. Going beyond the question of who has to prove what under German law, two decisions were taken to accelerate the project.

Firstly, UFC declared its preparedness to look for evidence that French consumers had been misled into paying the sum asked for to receive the prizes they had won.

Secondly, a strategy was defined which would integrate the other four categories into a lawsuit whilst overcoming the problem that VSV's action will be prescribed after a short period of 6 months.

This involved presenting the advertising campaign of "Direct Shopping" as a consistent and continuing strategy where one campaign follows another but where all seven campaigns have to be seen in their context in order to highlight the illegal dimension of "Direct Shopping's" activities on the French market.

Sending out a Warning Letter as the Decisive Step Before Filing the Lawsuit

UFC mailed six letters to VSV and they were translated within five days. On the basis of the additional information supplied to VSV, a warning letter (an "Abmahnung") was sent out on 12 January 1993. The requirement of an "Abmahnung" is not regulated by law. It is, legally speaking, the offer of a formal contract between VSV as the "claimant" and "Direct Shopping" as the "defendant." In response to VSV's offer the "defendant" could sign an undertaking ("Unterwerfungserklärung") to pay a contractual fine in case of a contravention. If the "defendant" signs the contract, VSV will refrain from filing a lawsuit and instead supervise the market in order to find out whether the contractual obligations are complied with. In the event that the "defendant" continues the incriminated practice, VSV can claim the contractual fine; if the "defendant" refuses to pay, VSV can file a lawsuit on the basis of the contract concluded. The "Abmahnung" is more open to interpretation and does not require the same degree of precision and investigation as the complaint itself. The "Abmahnung" is an attempt at eradicating violations of unfair competition law.

The content of VSV's "Abmahnung" of the 12 January 1993 takes note of the five categories of misleading advertisements which were further specified and concretized on the basis of the additional information VSV obtained after the meeting in December 1992. Emphasis is put on category number five, i.e., the variant under which the consumer has to pay a specific amount of money in order to get one of the "guaranteed" prizes. The contractual fine provided for was set at DM 7,500. "Direct Shopping" was given fourteen days, i.e., until 25 January 1993, to sign the undertaking. On 19 January 1993, VSV was informed by the attorney of "Direct Shopping" that no such undertaking would be signed. The reason stated was that the effects of the advertisements would be felt on the French market alone and

that VSV had no standing to blame "Direct Shopping" for having violated French law. The way was free now to file a lawsuit against "Direct Shopping."

Filing the Lawsuit Against "Direct Shopping" Under § 13 UWG

On 16 January 1993, VSV asked a Berlin-based law firm which they had used for years, to file a lawsuit against "Direct Shopping" and sent them the necessary documents. In order to prepare the statement of the claim, it was agreed to hold a meeting on 29 January 1993. The purpose of the meeting was fourfold:

(a) to brief the lawyer on the specific background of the lawsuit, i.e., to illustrate its pilot character and to explain the cooperation between UFC/VSV;
(b) to discuss the legal implications of the cross-border consumer complaint under German law, French law, private international law, and European law;
(c) to get to grips with the degree to which VSV must provide evidence that consumers have been misled by the advertising campaign of "Direct Shopping";
(d) to develop strategies as to how to proceed, i.e., how the two lawsuits of VSV and UFC could and should be interlinked.

The long-term strategy must embrace the complicated legal questions at stake here. The law firm received information from VSV on possible links between national law, private international law, and European law. The concrete and short-term problem, however, consisted of collecting information on French consumers who had suffered from the advertisement. It was agreed that any complaint against "Direct Shopping" would need further specifications linking the mailshot, the consumer's receipt of it, and reaction to it. The law firm insisted on the necessity not only for furnished evidence of the actual behaviour of the consumer but also for evidence that "Direct Shopping" was pursuing a particularly misleading strategy. Agreement was reached on the key role of the fifth category, where it would remain incumbent upon VSV/UFC to convince the court that consumers had been systematically promised a remuneration which had either not been sent out at all or which had been sent out, but was less than the value advertised. Just for demonstration purposes

it should be mentioned that VSV lists up to 25 consumers in comparable cases if the advertisements, is traced back to a German supplier.

The meeting on 29 January 1993 resulted in the decision to contact UFC again to ask for further information on the type and the number of violations, before the lawsuit could be filed. It should be admitted that the differences between the French and the German notion of what constitutes misleading advertising did not remain without repercussions on the cooperating partners. It is not easy to explain that the same advertisement which has been condemned as misleading under French law, does not automatically constitute a violation under German law, even though both countries insist on acting in conformity with the EEC Misleading Advertising Directive 84/450 of 10 September 1984.[23] The information needs of VSV can be broken down into two categories:

1. Qualitative requirements: VSV must demonstrate the links between the specific mailshot the consumer received, the products he or she ordered in reaction to that very mailshot, and the amount of money he or she paid for the products. Evidence comprises a copy of the mailshot, the payment, the consumer's letter to "Direct Shopping" and/or UFC, and the products he or she obtained after the payment in order to be able to prove that the value of the prize was lower than that promised in the advertisement.

2. Quantitative requirements: VSV must demonstrate that it is a strategy of "Direct Shopping" to ask for payment but fail to supply the products or to ask for payment but to send only useless and low-value products.

In reaction to the letter UFC drew up a list of consumers by which it was attempted to elucidate the necessary causal link between the advertisement and its misleading effects. VSV undertook the same step, thereby combining UFC's list with its own. A list of more than 20 consumers who had suffered from "Direct Shopping" could be drawn up. It must be noted, however, that the degree of detail in the information differs according to the individual consumer. The decision to file a lawsuit on the basis of this, according to German law still imperfect information, was considerably facilitated by a letter from the French Ministry of Economics to its German counterpart. Although the letter cannot be taken as proof, it indicates that mailshots sent to France from a German based distance selling firm had reached a degree of public attention whereby ministries felt the need to act. On 5 March 1993, VSV filed the lawsuit against "Direct Shopping,"

based on the fifth category of alleged violations. It remains to be seen whether the court will accept the information supplied as sufficient or whether it will require more concrete evidence, let alone what the defendant's strategy for getting out of the lawsuit will be.

Legal Problems Which VSV Might Face

There are close contacts between VSV and the Berlin based law firm. If the relevant court district is outside Berlin, the Berlin firm does all the relevant work of preparing and guiding the process, but is obliged to cooperate with a law firm admitted in that district.

International competence of the German court. The international competence of the German court results from Art. 2 para I of the Brussels Convention. It is determined by the registered business location of "Direct Shopping" as revealed with the assistance of the German Bundespost. If this address were not that of the firms's headquarters, but only that of a branch, the international competence might be challenged. Art. 5 para V of the Brussels Convention formulates relatively narrow conditions for such a branch. A mere advertising agent organizing the distribution of the mailshots from Germany to France would not meet the requirements laid down by the ECJ.[24]

If the international competence of the German court cannot be claimed under Art. 2 para I or 5 para V, there is still the opportunity to refer to Art. 5 para III. Its applicability would presuppose that unfair advertising may be put on an equal footing with tort law, a position which is very much supported in the legal doctrine (Reich, 1992c, p. 460). The ECJ has decided that in cross-border environmental complaints both the court where the damage occurred and that where the illegal action originated have jurisdiction.[25] The ECJ encourages forum shopping. Such a position does not seem to be compatible with the "Marktwirkungsregel" applied by the German Federal Court to deny the application of the German law in the Spanish excursion cases.[26] In a sense, it would have been consistent already to have rejected the international competence of the German court. There is no need, however, to parallel international competence and applicable law. International jurisdiction and the applicable law follow different rules (Behr, 1992; Sack, 1988).

Standing of VSV to the benefit of French consumers. Standing is a

requirement to file a law suit. It is determined by the rules of procedure of the court in question (*lex fori*). Standing of consumer organizations is defined in § 13 UWG. Case law has defined two requirements:

– the scope of activities, as laid down in the organization's statute, must cover the task of defending consumers' interests;

– this task must be carried out in practice which requires substantial personal and financial resources.

The mere fact that the scope of activities is bound to German territory and that VSV is financially entirely dependent on the German Ministry of Economic Affairs might lead to the conclusion that VSV's standing is bound to the defence of the interest of German consumers. One should not forget, however, that VSV is getting more and more involved in European consumer policy. It has been a member of the Consumer Law Group for 10 years and participates in the efforts of the UK Office of Fair Trading to build up an international network among consumer organizations for the exchange of information on cross-border consumer complaints. The German Ministry of Economic Affairs indirectly supports VSV's extension of activities, because the costs are covered by the normal budget. Whether these factual changes suffice to justify VSV's standing remains to be seen. It has been proposed that VSV would have to change its internal statute accordingly (Reich, 1992c, p. 471). Such an amendment does not need to be confirmed by the German Ministry of Economics. It must pass the internal procedural mechanism of VSV, i.e., it would need support and an official approval by VSV's Executive Board (Vorstand). The Ministry could indirectly exert influence on VSV by cutting the budget. So far, however, it seems to be sufficient that the Executive Board has been given a green light for the law suit in question.

There is no possibility to challenge the territoriality of standing under secondary EEC law. Directive 84/450 does not provide much help, as it leaves it to the discretion of the Member States, whether they are willing to introduce group action as an appropriate means or whether they rely on administrative control. Possible arguments for challenging the restrictions under primary EEC law will be dealt with separately.

The applicable law – the consequences of the Kaffeefahrten decisions. The applicable law depends on the *lex causae*, in unfair competition cases it would the *locus delicti*. Any search for a solution is compli-

cated by the fact that international tort law is not yet harmonized. The applicable law must be found on the basis of the national law on conflicts. The Institut du Droit International has provided guidelines for interpretation, according to which the applicable law shall be found with the help of the "Marktwirkungsregel." Preparatory activities, however, should and could be pursued separately in the country where the activities originate, under the law of that country.

From a German perspective, the Federal Court has defined where the solution has to be found in the excursion cases. The "Marktwirkungsregel" is applicable to cross-border consumer complaints, although it has been developed in a different context (Sack, 1988). It could lead to the dismissal of the action. There seems to be only one way out: VSV should argue before the courts that French law is likewise applicable. The Federal Court has not yet decided whether such a reference to foreign law is legally possible.[27] It has to be tested, though. VSV's intention in the Kaffeefahrten cases was not to challenge the unfair practices under Spanish law, but to extend the German law to sales excursions in Spain. Now, in the given case, this question has to be dealt with and it will be.

If the courts accept that VSV is entitled to base a group action on French law, quite another problem arises and again a solution is not even discussed. Is it possible to separate the question of standing from the applicable law ("Sachrecht") in such a way that standing has to be decided on the basis of German law and the violation itself on the basis of French law (Koch, 1990, p. 117)? The reverse problem comes up when UFC files a law suit before the German courts. One might find strong arguments implying that due to the lack of consistent procedural rules on the role and function of group actions in the differing legal systems, the issues of standing and applicable law cannot be separated. The group action is limited in its scope, it is granted to consumers to solve specific problems, such as unfair advertising, and it is limited thereto. It remains to be seen what the Courts will do.

IS IT POSSIBLE TO CHALLENGE THE GIVEN NATIONAL RESTRICTIONS UNDER PRIMARY COMMUNITY LAW?

The possible impact of primary Community law may be demonstrated by two rules which run counter to the solutions discussed so

far under private international law. The home country control principle (Herkunftslandprinzip) is opposite to the country of destination principle (Bestimmungslandprinzip), and the prohibition to discriminate against EC-foreigners forbids a preferential treatment of national consumers (Roth, 1991).

Europeanization of Standing

As long as there is no European group action, mutual access by consumer organizations to national courts might be achieved with reference to the freedom of services. UFC could then file a lawsuit before a German court, without the court being justified to challenge its standing under the requirements of German law, and vice versa. German consumer organisations could file a lawsuit in France without needing an "agrément" under French law.

That legal advice and legal representation are involved does not exclude the applicability of the rules on the freedom to provide services.[28] And even the cross-border character of the services is evident. It is the remuneration requirement which in the final analysis excludes mutual recognition of standing. Admittedly, not each and every part of the service must be made against payment,[29] however, the service must be marketable. The service must not be financed by the tax-payer or by the members of an association,[30] as is usually the case in the consumer field. Whether the ECJ will maintain remuneration as a condition for the applicability of Arts. 59/60 EEC Treaty can no longer be taken for granted. In its *Höfer* decision on the monopoly of the German Job Placing Agency ("Vermittlungsmonopol der Bundesanstalt für Arbeit") the ECJ upheld a broad notion of "enterprise,"[31] so as to bring the Bundesanstalt für Arbeit under that rule (Reich, 1992b, pp. 884–888). The Court did not have to decide whether Arts. 59/60 on the freedom to supply services were likewise applicable to the activities of the Bundesanstalt, because the cross-border character of the services offered by the Bundesanstalt was missing. The decision might nevertheless remove the remuneration requirement or at least initiate a process of reconsideration. That is why consumer organizations should base standing before foreign courts on the freedom of services, even if the result is uncertain.

As long as the further development in ECJ case law on the importance of remuneration in the applicability of Arts. 59/60 remains unclear, reference could be made to Art. 7 as an intermediary step.

It provides the basis not for mutual recognition, but probably for a simplified recognition procedure of consumer organizations before foreign courts. The argument runs as follows: As Art. 7 prohibits discrimination only within the scope of application of the Treaty of Rome, it is decisive whether foreign consumer organizations have obtained a position which is protected by EEC law.[32] Such a legal position could be taken for granted within the limits of Directive 84/450, even if control has not been put in the hands of consumer organizations alone. The group action should be regarded as part of the "effet utile," an argument which could be strengthened by the newly introduced Art. 129a of the renamed EC Treaty (Micklitz & Reich, 1992). The consequence of the applicability of Art. 7 on standing is manifold: In particular it would allow restrictions resulting from national rules limiting standing to the defence of the interests of national consumers to be set aside. Advice and information given and made available to foreign consumers should be seen as equivalent to advice given and provided to national consumers. If the German courts refuse standing of VSV and/or UFC, the decision could be challenged under EC law.

Home Country Control Principle and Applicable Law

The ECJ has developed the home country control principle to reduce and do away with barriers to trade. Access to the European market will be guaranteed to all those products and services which have been legally put into circulation in one of the Member States.[33] The rule, however, can be turned upside down and would then lead to a consequence which is often neglected, namely that free access does not exist if the putting into circulation of goods and services is illegal or unlawful. The Member States (and this is central to the argument) have a "co-responsibility" (Reich, 1992c, p. 509; Roth, 1991, p. 667). The further idea of the home country control principle is that a Member State is under a legal obligation to take care that citizens of other Member States are not endangered by risks originating from its territory. What is at stake here is an extension of the Member States' responsibility beyond their own territory. Misleading or unfair advertising would have to be fought at the sources, i.e., where the preparatory actions are taken. Such a conclusion is justifiable under existing law as long as the co-responsibility of the Member States derives from secondary Community law. Where there is secondary

Community law, which provides common European standards, these standards must be seen as the yardstick for examining the lawfulness of the action. Formulated with reference to the relationship of Community law and in the terminology of private international law the co-responsibility would lead to an EEC-specific conflict rule (Reich, 1992c, p. 513) of the national law. The Directive itself, however, cannot be directly applied. It is the national law, implementing Directive 84/450, which has to be referred to in the given case. The reason behind this differentiation is the still existing case law of the ECJ that directives do indeed have no direct horizontal effect; they cannot put obligation upon private persons, but only on states.

The Federal Court's case law, if reconsidered in the light of the extended home country control principle, would set aside the "Marktwirkungsregel" as an appropriate means of justifying the non-applicability of German law. Quite the contrary is true: If it can be demonstrated that the mailshots of "Direct Shopping" made their way to France from the German territory, it would be up to Germany to take measures to ensure that French consumers are not endangered by German-based misleading advertisements. If German law does not allow such a control, it should be interpreted in the light of European law, so as to bring to bear the home country control principle.

Differing Notions of Misleading Advertising in German and French Law

Under French law an abstract danger to consumers suffices to assume the misleading character. It is not necessary to provide any evidence that consumers have suffered from the advertisement. It is enough that the advertisement is misleading. The German situation is more complicated: VSV is faced with finding quite a number of consumers who can provide evidence of the harm they have suffered or of the mere fact that they have been misled. Directive 84/450 might be read so as to support the French interpretation. If the German courts involved in VSV's lawsuit are not willing to accept the supplied information as being sufficient to provide evidence on the strategic character of "Direct Shopping's" misleading advertising activities, one should consider the need for an official EC definition in order to find out what should be understood by misleading advertising in

Directive 84/450. Again, the EC would be the addressee of such a request. It looks as if the ground is already being prepared in Germany. Interest is growing as to the possible differences between the German concept of "misleading advertising" and the concept of "misleading advertising" under Community law (Meyer, 1993).[34]

A Possible Alternative: Developing a Rule of Substantive Law Condemning "Dumping" Due to Unequal Standards

It might be argued that a trader's exploitation of the existence of unequal standards, to the detriment of consumers, ought to be considered as "dumping" and hence must be regarded as unfair. There has indeed been a highly controversial decision by the German Federal Court on developing such a rule forbidding the practice of such "dumping" ("Ausnutzung eines internationalen Rechtsgefälles"),[35] but the decision was widely rejected and the Court refrained from further elaborating its jurisprudence (Mook, 1986). The situation is somewhat different in the European Community. It is not so much that suppliers or distance selling firms are making use of regulatory gaps. The law exists in the form of directives, but it gets lost in cross-border consumer complaints. It is not so much the non-availability of the law, but its non-enforceability which is at stake. Such consequences might be accepted in international relations, but are unacceptable in the Internal Market.

There are two strains of arguments, on which the development of a European verdict of "dumping" due to the exploitation of unequal standards could be based (Micklitz, 1992).

Firstly, one could refer to Art. 30 and treat all those national measures which hinder the prosecution and the execution of cross-border consumer complaints as having "equivalent effect." Such a rule would have far-reaching effects on national legal systems. Each and every national rule could be challenged under Community law, a consequence which nevertheless seems to be inherent in the *GB-INNO* decision.[36] The real problem seems to be, however: Where should the Court get the standards from against which the national rules could be measured? There is no directive on cross-border consumer litigation; there is not even a policy statement to which the Court could refer.[37]

A second set of arguments might refer to Art. 5 of the EC Treaty obliging the Member States to cooperate and to "abstain from any

measure that would jeopardize the attainment of the objectives of this Treaty." The Maastricht Treaty and the subsidiarity principle introduced there even strengthen the Member States' obligations in that respect (Cass, 1992; Emiliou, 1992; Micklitz & Weatherill, 1993; Pipkorn, 1992; Toth, 1992). The ECJ has not had much opportunity to develop horizontal cooperation duties between Member States (Temple Lang, 1990), but this might change with the growing number of cross-border consumer complaints.

OUTLOOK

Already today it is predictable that it will take time before it is possible to present results of the lawsuits filed. The background material is now available, the complex legal issues are determined as far as it is possible to predict them, the cooperation with BEUC and UFC has been intensified and deepened, but legal progress is slow. The experiences demonstrate once again the differences between law in the books and law in action. The building of a Europe of consumers will take time, but consumer organisations will have to contribute by using European law as a tool just as industry and commerce have done for more than thirty years now.

NOTES

[1] Jugement du 2 October 1991, 31 Chambre Correctionelle du Tribunal de Grande Instance de Paris, Affaire No P 88 314 2003 6.

[2] Jugement de la Cour Civile de Grande Instance de Nanterre, R.G.: 92-4163, 1.2.1993, to be published in VuR 4/1993.

[3] OJ L 371/31 of 31.12.1985.

[4] In the meanwhile both countries have taken the necessary measures, in Spain by Law 26/1991, BOE 283 of 26.11.1991, and in Italy by Regulation No. 50/1992, GU 27 of 3.2.1992.

[5] BGHZ 112, 204 = EuZW 1990, 546 = ZIP 1990, 1348 = RIW 1990, 546 on the AGBG, and BGHZ 113, 18 = NJW 1991, 1054 on the UWG.

[6] BGH NJW 1991, 1054.

[7] Landgericht München, AZ 4 HKO 21 509/91, 2.4.1992, VuR 1/1993, 62 et seq.

[8] BGHZ 113, 18 et seq.

[9] Landgericht Frankfurt, 9.2.1988, VuR 1988, 162 et seq.; Oberlandesgericht Frankfurt, 1.6.1989, NJW-RR 1989, 1018 et seq.

[10] BGH ZIP 1990, 1348 et seq.

[11] The Rome Convention has been integrated into the Einführungsgesetz zum Bürgerlichen Gesetzbuch, the so-called EGBGB (Art. 27 EGBGB).

[12] LG Hamburg, 21.2.1990, NJW-RR 1990, 495 = RIW 1990, 664 = IPRAX 1990, 239; LG Hamburg, 29.3.1990, NJW-RR 1990, 695 = RIW 1990, 654; OLG Frankfurt, 1.6.1989, NJW-RR 1989, 1018; differing opinion OLG Celle, 28.8.1990 EuZW 1990, 550 and all those courts who start from the idea that the contract has been concluded in Spain; AG Bochum, 2.11.1988, 70 C 135/88.

[13] OLG Stuttgart, 18.5.1990, NJW-RR 1990, 1081 et seq.; LG Würzburg, 19.5.1988, NJW-RR 1988, 1324 et seq.

[14] AG Bremerhaven, 27.6.1990, EuZW 1990, 294; OLG Stuttgart, 18.5.1990, NJW-RR 1990, 1081 et seq.; differing opinion OLG Hamm, 1.12.1988, NJW-RR 1989, 496 et seq. and OLG Celle, 28.8.1990, EuZW 1990, 550.

[15] LG Hamburg, 21.2.1990, NJW-RR 1990, 495; LG Aachen, 21.2.1991, RIW 1991, 1045 = NJW-RR 1991, 885 et seq.

[16] OLG Hamm, 1.12.1988, NJW-RR 1989, 496 et seq.

[17] LG Bamberg, 17.1.1990, NJW-RR 1990, 694 et seq.; AG Lichtenfels, 24.5.1989, IPRAX 1990, 235 et seq.; differing opinion, OLG Hamm, 1.12.1988, NJW-RR 1989, 496 et seq.

[18] LG Frankfurt, 9.2.1988, VuR 1989, 162 et seq.

[19] OLG Frankfurt, 1.6.1989, NJW-RR 1989, 1018 = WRP 1990, 180 = RIW 1989, 646 with a comment of Huff (1989).

[20] AG Bremerhaven, 27.6.1990, NJW-RR 1990, 1083 = EuZW 1990, 294; OLG Celle, 28.8.1990, EuZW 1990, 550 with a critical comment by Herber (1991).

[21] LG Limburg, 22.6.1988, NJW-RR 1989, 119 et seq.: choice of law void under Spanish law; AG Wuppertal, 12.6.1992, VuR 1/1993, 55: claim for annulment; AG Bergisch-Gladbach, 19.9.1989, 24 C 627/88, not published: dismissal of the consumer complaint.

[22] Text published in Journal of Consumer Policy, 1992, 15, 297–332.

[23] OJ L 250/17 of 19.9.1984.

[24] (1976) ECR 1497 – De Bloos./. Bouyer; (1978) ECR 2183 – Sonafer ./. Saar-Fergas. Both judgements presuppose an activity lasting for some time in the country where the branch is located.

[25] ECR 1976, 1735 – Bier ./. Mines de Potasse d'Alsace.

[26] BGH NJW 1991, 1054 et seq.

[27] NJW 1991, 1055.

[28] (1974) ECR 1299 – van Binsbergen ./. Bedrijfsvereinigung Metallnijverheid; (1988) ECR 1123 – Kommission ./. Bundesrepublik Deutschland.

[29] (1988) ECR 2985 Nr. 16 – Bond van Adverterdeers ./. Niederländischer Staat.

[30] (1988) ECR 5365 – Belgium ./. J. Humble.

[31] (1991) ECR I-1979.

[32] (1989) ECR 195 – Cowan ./. Trésor Public.

[33] Reference to the legality is transparent in (1979) ECR 649 – Cassis de Dijon; (1987) ECR 1927 – Kommission ./. Bundesrepublik Deutschland – purity requirements of German beer.

[34] For recent decisions and the conflicts which might result from different notions of misleading advertising, see, on the one hand, (1992) ECR I 331 – Nissan, and, on the other hand, BGH, 5.12.1991 – I ZR 63/90, ZIP 1992, 722 with the comment of Piper (1992).

[35] BGH 9.5.1980, NJW 1980, 2018.

[36] (1990) ECR I-667.

[37] In the GB-INNO case – see Note 36 – the Court referred to the consumer protection programme as a yardstick.

REFERENCES

Behr, V. (1992). Internationale Tatortzuständigkeit für vorbeugende Unterlassungsklagen bei Wettbewerbsverstößen. *Gewerblicher Rechtsschutz Urheberrecht (GRUR) International*, 1992, 604–606.

Calais-Auloy, J. (1992). *Droit de la consommation.* Paris: Edition Dalloz Sirey.

Cass, D. Z. (1992). The word that saves Maastricht? The principle of subsidiarity and the division of powers within the European Community. *Common Market Law Review, 29*, 1107–1136.

Coester-Waltjen, D. (1991). Eskimomantel aus Spanien – Ist der kollisionsreiche Verbraucherschutz zu kurz gestrickt? In: B. Pfister & M. R. Will (Eds.), *Festschrift für W. Lorenz*, pp. 297–319. Tübingen: Mohr.

Ebke, T. (1991). Erste Erfahrungen mit dem EG-Schuldrechtsübereinkommen. In: C. v. Bar (Ed.). *Europäisches Gemeinschaftsrecht und IPR*, pp. 97–106. Cologne: Heymanns.

Emilou, N. (1992). Subsidiarity. An effective barrier against "the enterprise of ambition"? *European Law Review, 17*, 385–407.

Herbert, H. (1991). Direktwirkung sogenannter horizontaler Richtlinien? *Europäische Zeitschrift für Wirtschaftrecht, 2*, 401–404.

Hoffmann, B. v. (1992). Consumer contracts and the Rome Convention of 1990 on the Law Applicable to Contractual Obligations. *Journal of Consumer Policy, 15*, 365–384.

Huff, M. (1989). Unwirksame Rechtswahlklausel bei ausländischer Verkaufsveranstaltung. In: *Entscheidungen Zum Wirtschaftsrecht, 5*, 995–996.

Jayme, E. (1990). Haustürgeschäfte deutscher Urlauber in Spanien – Horizontale Wirkungen von EG-Richtlinien und internationales Vertragsrecht *Praxis des Internationalen Privat-und Verfahrensrechts, 10*, 220–222.

Koch, H. (1990). *Verbraucherprozeßrecht.* Heidelberg: C. F. Müller.

Kothe, W. (1990) Verbraucherschutzrecht im Lichte des europäischen Wirtschaftsrechts. *Europäische Zeitschrift für Wirtschaftsrecht, 1*, 150–156.

Lüderitz, A. (1990). Internationaler Verbraucherschutz in Nöten. *Praxis des Internationalen Privat- und Verfahrensrechts, 10*, 216–219.

Meyer, A. H. (1993). Das Verbraucherleitbild des Europäischen Gerichtshofs – Abkehr vom flüchtigen Verbraucher. *Wettbewerb in Recht und Praxis, 39*, 215–224.

Micklitz, H.-W. (1992). *Möglichkeiten und Grenzen der Kontrolle von unfairen oder mißbräuchlichen Geschäftspraktiken im grenz-überschreitenden Waren und Dienstleistungsverkehr durch Verbraucherorganisationen.* Manuscript of lecture given at the University of Bremen, 11 December 1992.

Micklitz, H.-W., & Reich, N. (1992). Verbraucherschutz im Vertrag über die Europäische Union, Perspektiven für 1993. *Europäische Zeitschrift für Wirtschaftsrecht, 3*, 593–598.

Micklitz, H.-W., & Weatherhill, S. (1993). Consumer policy in the EC: Before and after Maastricht. *Journal of Consumer Policy, 16*, this issue.

Mook, K. H. (1986). *Internationale Rechtsunterschiede und nationaler Wettbewerb.* Berlin: Duncker & Humblot. Schriften zum internationalen Recht, Band 36.

Piper, H. (1992). Zu den Auswirkungen des EG-Binnenmarktes auf das deutsche Recht gegen den unlauteren Wettbewerb. *Wettbewerb in Recht und Praxis, 38*, 685–691.

Pipkorn, J. (1992). Das Subsidiaritätsprinzip im Vertrag über die Europäische Union – rechtliche Bedeutung und gerichtliche Überprüfbarkeit. *Europäische Zeitschrift für Wirtschaftsrecht, 3*, 697–700.

Reich, N. (1989). Cleverles Binnenmarkt, Gutachters Kunst und Richters Rechtverfremdung. *Verbraucher und Recht, 5*, 158–161.

Reich, N. (1992a). Cleverles Binnenmarkt II: Vom Sieg der praktischen über die theoretische Vernunft. *Verbraucher und Recht, 7*, 189–192.

Reich, N. (1992b). Competition between legal orders: A new paradigm of EC law. *Common Market Law Review, 29*, 861–896.

Reich, N. (1992c). Rechtsprobleme grenzüberschreitender irreführender Werbung im Binnenmarkt – dargestellt am deutschen, französischen und englischen Recht unter besonderer Berücksichtigung des EG-Rechts (with an English summary). *Rabels Zeitschrift für ausländisches und internationales Privatrecht, 56*, 445–520.

Roth, W.-H. (1991). Der Einfluß des Europäischen Gemeinschaftsrechts auf das Internationale Privatrecht. *Rabels Zeitschrift für ausländisches und internationales Privatrecht, 55*, 625–672.

Sack, R. (1988). Die kollisionsrechtliche und die wettbewerbsrechtliche Beurteilung grenzüberschreitender Werbe- und Absatztätigkeit nach deutschem Recht. *Gewerblicher Rechtsschutz und Urheberrecht (GRUR) International*, 1988, 320–343.

Taupitz, J. (1990). Kaffefahrt auf Gran Canaria – Deutscher Verbraucherschutz im Urlaubsgepäck? *Betriebsberater, 45*, 642–652.

Temple Lang, J. (1990). Community constitutional law, Art. 5 EEC Treaty. *Common Market Law Review, 27*, 645–681.

Toth, A. G. (1992). The principle of subsidiarity in the Maastricht Treaty. *Common Market Law Review, 29*, 1079–1106.

ZUSAMMENFASSUNG

Grenzüberschreitende Verbraucherbeschwerden – Französisch-deutsche Erfahrungen. – Der Aufsatz berichtet und analysiert die Zwischenergebnisse einer gemeinsamen Initiative von europäischen Verbraucherorganisationen, die irreführende Wettbewerbspraktiken bekämpfen wollen, die ihren Ausgangspunkt in Deutschland haben und gegen französische Verbraucher gerichtet sind. Die herkömmlichen Rechtsdurchsetzungsmechanismen sind bislang ungeeignet, einen ausreichenden Rechtsschutz bei granzüberschreitenden Beschwerden zu gewährleisten, die mit der Vollendung des Binnenmarktes zunehmend um sich greifen. Der Autor diskutiert Strategien, um gegen den wettbewerbswidrig Handelnden im Verursachungstaat vorzugehen, d.h. dort, wo die Handlungen ihren Ursprung nehmen, und nicht erst dort, wie unter traditionellem internationalem Recht, wo sie ihre schädigenden Auswirkungen haben.

THE AUTHOR

Hans W. Micklitz is Professor of Civil and European Law at the Fachhochschule für Wirtschaft Berlin, Badensche Straße 50–51, D-10825 Berlin, Germany.