ULB UNIVERSITÉ LIBRE DE BRUXELLES

# European Consumer Summit 2016

## *Enhancing the effectiveness of the injunction procedure – Using the Belgian « Action en cessation » for guidance?*

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# Brief historical recap

**Belgian Law 1934 : introduction of actions for injunctions ("action en cessation" "cessation proceedings") as a new means of fighting unfair competition**

= The procedure is submitted and dealt with as a claim **as in** interlocutory proceedings before the president of the court

HOWEVER, it allows a decision on the merits

The decision is obtained quickly, without having to prove the urgency of the claim

- **Since 1971** ("Loi sur les pratiques du commerce" = *Law on commercial practices*): this procedure enables **consumer associations** to bring an "action en cessation" in order to fight the violation of consumer rights

- Nowadays (since 2015) : this action is ruled by the new "Code de droit économique" (*Economic Law Code)*

# The « action en cessation » à la belge: how does it work?

**= Action « as in interlocutory proceedings »**
**(in French : « comme en référé »):**

- **Same procedural rules**
- **BUT results in a final judgment (*res judicata*), not a provisional ruling**

# Specific characteristics of the action « en cessation »

**The « action en cessation » as in interlocutory proceedings :**

- has precedence over the criminal proceedings (« tient le pénal en l'état »)
- The State may sue
- follows the **procedural rules and delays** of urgent and summary proceedings

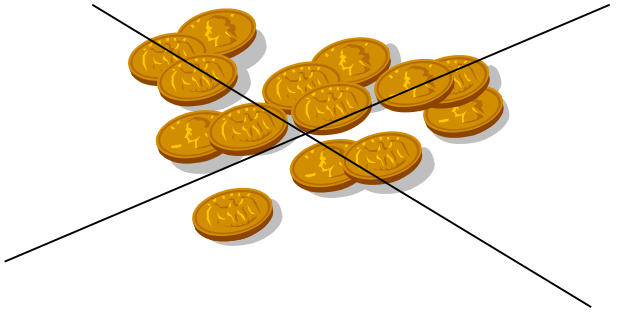
## Specific characteristics of the judgment « en cessation »

### The judgment on the merits :

- is enforceable, notwithstanding any appeal against the decision
- Any breach of an injunction « en cessation » is a criminal offense

# The powers of the judge « en cessation » are restricted by law

**For instance : this judge does not have the power to allocate damages**



- **Urgency has not to be demonstrated**
- **The judge = the president of the commercial court**
- **Most of the time : « cessation sous peine d'astreinte » = injunction completed by coercive fine**

# Who is authorised to bring this action?

- Any interested party
- The State
- Professional authorities and groups*
- Consumer associations*

* For the protection of the collective interests they represent

# Examples from the case law

- **Several orders to cease at the request of a consumer association:**
  - **using of unfair contract terms (i.a. : < banks and insurance companies)**
  - **Unfair commercial practices (misleading advertising, …)**

# Examples from the case law

- BUT : those cases are rather rare (many more cases are initiated by firms)
- <
  - lack of means of the consumer associations
  - only one association (= Test-Achats – Test Aankoop) initiates proceedings, as well « en cessation » as (since 2014) in collective redress…

# Conclusion

- The Belgian « Action en cessation » is very effective and efficient
- Enhancing its efficiency for the consumers should require more actions initiated by consumer associations (and State members?)
- Therefore, consumer associations likely need more human and financial means

# Thank you for your attention !