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The economic damage resulting from an act of unfair competition cannot be presumed, it must be established

In a decision issued on September 18 2019, the *Cour de Cassation* (French Supreme Court) recalled that while disparagement which constitutes an act of unfair competition necessarily results in a business disruption, a claim for compensation must be dismissed wherever the existence of the alleged damage is not duly established.

In the matter at hand, a company specialized in the design, manufacture and marketing of multisport playgrounds sued one of its competitors for acts of unfair competition by disparagement and sought compensation for the damage suffered^[1].

The plaintiff complained in particular that its competitor criticized its model, suggesting that it would have serious disadvantages.

Although the appellate judges acknowledged the existence of the alleged acts of unfair competition and the existence of a resulting business disruption, they dismissed the claim for compensation on the ground that the damage suffered was not established.

The unsuccessful plaintiff lodged an appeal before the *Cour de Cassation* and argued that the disparagement that the Court of Appeals itself had acknowledged had caused a business disruption that resulted in a damage, at least a moral one. In particular, it referred to the case law according to which acts of unfair competition necessarily cause damage.

However, the *Cour de Cassation* dismissed the appeal and uphold the appellate decision. It ruled that “*the judgment holds that, with regard to the alleged business disruption, [the plaintiff] proceeds only by way of*



affirmation, without even indicating the nature of the disruption or providing any document making it possible to assess its pecuniary value, and it does not therefore establish the existence of a damage and a causal relationship between the damage and the disparagement.”

It is clear from this decision that while acts of unfair competition necessarily cause damage, it is still necessary for the injured party to demonstrate, with supporting evidence, the nature and amount of the damage. Failing this, the court cannot rule and will reject the claims.

[1] Commercial Chamber of the *Cour de Cassation*, September 18, 2019, n° 18-11.678

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