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**FRENCH REPUBLIC**  
ON BEHALF OF THE FRENCH PEOPLE

**PARIS COURT OF APPEAL**

**Division 5 - 16**

**International Commercial Chamber**

**JUDGMENT OF 2 FEBRUARY 2021**

(No /2020, 8 pages)

General Directory Entry Number: N° **RG 20/04730** - N° **Portalis 35L7-V-B7E-CBUAQ**

Decision referred to the Court: Judgment dated 12 December 2019- Paris Commercial Court - RG n° 2017066616

**APPELLANT**

**PHARMALEAD**

A company registered with the Beirut (LEBANON) Registry of Trade and Companies under number : 1805989

Having its registered offices at rue Sioufi, Immeuble Samaha, Achrafieh, Beyrouth (LIBAN)

Represented by its legal representatives,

*Represented by* (), *lawyer, member of the Paris Bar, Court registration : A*

**RESPONDENT**

**S.A.S. ABBOTT PRODUCTS DISTRIBUTION**

A company registered with the Créteil Registry of Trade and Companies under number : 015 450 752

Having its registered offices at 3, place Gustave Eiffel Bâtiment Florence BP 60213- 94518 Rungis cedex

Represented by its legal representatives,

*Represented by* (), *lawyer, member of the Paris Bar, Court registration : B*

**COMPOSITION OF THE COURT**

The case was heard on 15 December 2020, in open Court, before the Court composed of:

Mr. François ANCEL, President

Ms. Fabienne SCHALLER, Judge

Ms. Laure ALDEBERT, Judge

who ruled on the case. A report was presented at the hearing by Mr. François ANCEL in accordance with Article 804 of the Code of Civil Procedure.

**Clerk** at the hearing: Ms Clémentine GLEMET

**JUDGMENT:**

- ADVERSARIAL

- judgment made available at the Clerk's office of the Court, the parties having been notified in advance under the conditions provided for in the second paragraph of Article 450 of the Code of Civil Procedure.

- signed by François ANCEL, President and by Clémentine GLEMET, Clerk to whom the minute was delivered by the signatory judge.

**I- STATEMENT OF FACTS AND PROCEEDINGS**

**Facts :**

1- Pharmalead is a public limited company incorporated under Lebanese law, established in 2012 by its executive director Mr. C, whose main activity is the promotion and marketing on the Libyan market of pharmaceutical products sold by the Abbott group, which includes the French company Abbott Products Distribution SAS (hereafter "APD"), products that were previously sold by the Solvay group.

2- As of 1 January 2013, the Abbott group decided to entrust Pharmalead the promotion of the former "Solvay" and "Abbott" products.

3- Thus, on 8 April 2013, Pharmalead and Abbott Products SAS (formerly Solvay Pharma) signed a contract for the promotion of products in the Solvay range and on the same day another contract was concluded between Pharmalead on the one hand, and the Swiss company Abbott Laboratories on the other hand, for the promotion of Solvay products, each contract expiring on 31 December 2014

4- Following the acquisition of the pharmaceutical activities of the Abbott group by Mylan in February 2015, Abbott Products SAS changed its corporate name to become Mylan Médical SAS.

5- The management of the promotion of Abbott products in Libya, which was not transferred to the Mylan group, was taken over by another entity of the Abbott group, the Swiss company Abbott Products Operations AG.

6- It is in this context that a contract called "Marketing and Promotion Services Agreement" was concluded on 1 January 2015 between Pharmalead and Abbott Products Operations AG.

7- On 25 February 2016, Pharmalead was notified of the refusal to renew the contract signed at the beginning of 2015 with the Swiss company Abbott Products Operations AG for 2016.

8- Considering that it had been the victim of an abrupt breach of commercial relations established over 25 years, Pharmalead notified Abbott Products Operations by letter dated 21 April 2016 of its

demand for compensation for its loss, and then, in the face of its refusal, reiterated its claims by letter dated 28 September 2016.

### **Proceedings :**

9- It is in these circumstances that, in a writ of summons dated 3 April 2017, Pharmalead brought an action before the Créteil Commercial Court requesting a judgement against the French company APD, jointly and severally with Abbott Products Operations, for the abrupt termination of established commercial relations, claiming that the relationship had been in place for 25 years and claiming damages of €1,732,673 under Articles L. 442-6, I, 5° and L. 420-2 paragraph 2 of the Commercial Code.

10- By judgment issued on 26 September 2017, the Créteil Commercial Court ruled that it lacked jurisdiction and referred the case to the Paris Commercial Court as a court specializing in disputes based on the abrupt termination of commercial relations.

11- The Paris Commercial Court ruled that it lacked jurisdiction over the Swiss company Abbott Products Operations AG by judgment of 18 October 2018, and "dismissed" its claims against APD by judgment of 12 December 2019, on the grounds that it did not provide proof of the transfer of rights within the chain of successive signatories to the contracts on which the company availed and that, moreover, APD was not a signatory to any of these contracts.

12- According to a notice of appeal dated 3 March 2020, Pharmalead appealed the judgment issued on 12 December 2019 by the Paris Commercial Court. The closure of the case management procedure was ordered on 8 December 2020.

### **II- CLAIMS OF THE PARTIES**

**13- According to submissions filed electronically on 30 July 2020, Pharmalead requested the Court, under Article 3 of the Civil Code and Article L442-6- I.5° of the Commercial Code, to:**

- REVERSE the judgment of the Commercial Court of Paris of 12 December 2019,

and, ruling again :

On a preliminary basis :

- JUDGE that Pharmalead's action is admissible, and RECALL that Article L. 442-6 I.5° of the French Commercial Code is an overriding mandatory rule applicable to this dispute,

On the merits :

- JUDGE that Abbott Products Distribution SAS has abruptly broken the commercial relationship established for 25 years with PHARMALEAD,

And, consequently:

- ORDER Abbott Products Distribution SAS to pay the amount of 1,568,559.44 euros as compensation for the damages suffered by PHARMALEAD, with legal interest from the formal notice of 28 September 2016, capitalized from the day of the summons of April 3, 2017, the first term of this claim ;

Finally, in any case :

- ORDER Abbott Products Distribution SAS to pay the amount of 50,000 euros under Article 700 of the French Code of Civil Procedure, as well as all costs

**14-According to submissions filed electronically on 28 October 2020, Abbot Products Distribution SAS requests the Court, under articles 31, 32, 42, 73 and following, 122 and following, 1448 of the Code of Civil Procedure, to :**

IN LIMINE LITIS, ON THE NON-ADMISSIBILITY OF Pharmalead's CLAIMS, to:

- UPHOLD the judgment of the Paris Commercial Court of 12 December 2019 insofar as it found and ruled Pharmalead inadmissible in its action against Abbott Products Distribution SAS failing any interest in bringing the action, since Abbott Products Distribution SAS was not a party to the contract of 1 January 2015, which has not been renewed, that Abbott Products Distribution SAS has never had any commercial relations with PHARMALEAD, and that Abbott Products Distribution SAS cannot therefore be held responsible for having broken off commercial relations to which it was not a party;

ON THE ABRUPTNESS OF THE RUPTURE:

- Primarily, to FIND and RULE that Abbott Products Distribution SAS had no commercial relationship with PHARMALEAD, and did even less breach the commercial relationship between Pharmalead and the sole entity Abbott Products Operations AG, so that Pharmalead shall be dismissed of its claims and pretentions;
- Alternatively, to FIND and RULE that the liability of Abbott Products Distribution SAS cannot be usefully sought under the former Article L. 442-6 I 5° since the non-renewal of the promotion contract on 1 January 2015 was caused by a case of force majeure relating to the impossibility for Abbott PRODUCTS OPERATIONS AG to distribute its products on Libyan soil, due to the aggravation of the second Libyan civil war;
- Very alternatively, to FIND and RULE that the liability of Abbott Products Distribution SAS cannot be usefully sought under the former Article L. 442-6 I 5° since, on the one hand, the duration of the commercial relationship and the provisions of the last contract of 1 January 2015 were in no way such as to oblige ABBOTT PRODUCTS OPERATION AG, and a fortiori the respondent Abbott Products Distribution SAS, which was not part to the legal relationship, to comply with any notice period, and on the other hand, since the former Article L. 442-6 I 5° does not come under international public policy, it is not applicable to the dispute, which is governed by Swiss law;

IN ANY CASE:

- DISMISS Pharmalead of its claims and demands
- ORDER Pharmalead to pay Abbott Products Distribution SAS the sum of EUR 15,000 under the article 700 of the Code of Civil Procedure

**III – ARGUMENTS OF THE PARTIES AND GROUNDS OF THE DECISION**

## **On Pharmalead's interest in bringing an action against Abbott Products Distribution ;**

15- **Pharmalead** requests the overturning of the judgment, which has dismissed its claim for lacking of interest in bringing the action after stating that it did not justify the transfer of rights on its side and on the side of APD, the latter not appearing on any of the contracts.

16- Pharmalead argues in view of Article 31 of the Code of Civil Procedure that it does have an interest in acting against APD, which has been its real interlocutor since the Abbott Group took over the contractual obligations of the Solvay Group. It explains that the Swiss company Abbott Products Operations, a wholly-owned subsidiary of Abbott Laboratories, is only a party to the contract of 1 January 2015 for tax reasons.

17- It states that it was APD that negotiated, performed and terminated the contract of 1 January 2015 and that Mr C and his company Pharmalead have had an ongoing commercial relationship with the Abbott Group since 1991. It states that the pharmaceutical products sold have remained the same for 25 years, proving the stability and continuity of the contractual relationship.

**18- In response, APD** argues that Pharmalead is inadmissible in bringing an action against it, as it lacks of interest in acting within the meaning of Articles 31, 32 and 122 of the Code of Civil Procedure. It argues that it is not a party to the contract of 1 January 2015, which was not renewed, and that it has never had a commercial relationship with Pharmalead and cannot therefore be held responsible for having broken off commercial relations to which it was not a party.

19- It points out that all the contracts relied on by the appellant were concluded by companies other than APD and that it cannot be argued that there is a "global relationship" based on the multiplicity of contracts without the parties referring to it and agreeing to it.

### **Thereupon,**

20- Pursuant to Articles 30 and 31 of the Code of Civil Procedure, an action is the right for the author of a claim to be heard on the merits of that claim so that the judge may decide whether it is well-founded or not, and is open to all those who have a legitimate interest in the success or rejection of a claim, subject to the cases in which the law grants the right to act only to those persons whom it qualifies to raise or defend a claim, or to defend a specific interest.

21- The interest in bringing an action is not, however, subject to the prior demonstration of the merits of the action and the existence of the right invoked is not a condition of admissibility of the action but of its success.

22- In the present case, the fact that it is argued that no contract was signed between Pharmalead and Abbott Products Distribution SAS does not constitute a plea of inadmissibility but a plea aiming to contest the merits of the claim, which must be assessed as such.

23- The plea of inadmissibility shall therefore be dismissed, and the judgment of the Paris Commercial Court shall be upheld on this point.

## **On the abrupt termination of established commercial relations;**

24- Pharmalead claims that Mr. C and his company had an established commercial relationship with the Abbott Group that lasted 25 years. It states that they have been in contact with the Solvay Group, now the Abbott Group, since 1991, through several contracts which were all concluded by

or on behalf of Mr C and which all had as object the promotion and marketing of Solvay and LTM products, which became "Abbott" products.

25- In response, APD, although it acknowledges that commercial relations existed between various entities of the Abbott group and Pharmalead, reminds that it has never had a commercial relationship with the latter. It also points out that it was Abbott Products Operations that did not wish to renew the contract concluded in 2015.

**Thereupon;**

26- Article L. 442-6, I, 5° of the French Commercial Code, in its version applicable to the facts of the case, provides that "the fact, by any producer, trader, industrialist or person registered in the trade register, (...) 5° to suddenly break off, even partially an established commercial relationship, without prior written notice period taking into account the duration of the commercial relationships and complying with the minimum period of notice determined, with reference to trade practices, by interprofessional agreements" entails the responsibility of the perpetrator and obliges him to compensate for the damage caused.

27- The notion of an established commercial relationship presupposes, even in the absence of a written agreement, and even if it was brief, the existence of a business relationship that is of a certain duration, continuous and of a certain intensity, so that the victim of the breach should have been able to reasonably anticipate for the future, even if brief, a certain continuity of the flow of business with its commercial partner, the established commercial relationship being understood to mean commercial exchanges concluded between the parties to the dispute.

28- The notion of commercial relationships can only be understood as relations that are effectively and genuinely maintained between legal or natural persons. It thus implies commercial exchanges concluded directly between the parties to the dispute and cannot be considered globally at the level of a group of persons who are legally distinct from each other, unless it can be shown that the rights governing that commercial relationship have been transferred.

29- In the present case, Pharmalead is relying on a commercial relationship established for 25 years, characterised by the signing of several successive contracts with the Abbott Group (formerly the Solvay Group) and specifically the following contracts:

- An Agency Agreement of 22 November 1991 renewed until 31 December 1994 concluded between Occitania Chemicals SA and Solvay Duphar BV, it being noted that following an amendment Mr. C replaced the former as of 1995.

This contract was renewed until 31 December 1998.

This contract establishes a commercial relationship between Occitania Chemicals SA and then Mr. C on the one hand and Solvay Duphar on the other hand between 1991 and 1998.

- A contract ("Agreement") of 18 October 1993 signed by Occitania Chemicals SA with the French company Laboratoires De Thérapeutique Moderne (hereinafter "LTM"), which in 1996 became Solvay Pharma. By an amendment of 28 June 1994 (signed on 8 August 1994), the contractual position of Occitania Chemicals was transferred to Mr C and the contract was renewed on an annual basis until 31 December 2011.

This contract establishes a commercial relationship between Occitania Chemicals SA and then Mr. C on the one hand and LTM and then Solvay Pharma on the other hand, between 1993 and 31 December 2010.

- A service contract of 22 June 2006, renewed until 31 December 2012 between Mr. C and Solvay Pharma (which itself became Abbott Products Sas). This contract was renewed regularly between 2006 and 31 December 2012.

This contract establishes commercial relationships between C on the one hand, and Solvay Pharma (itself now Abbott Products Sas) on the other hand between 2006 and 2012.

- A contract dated 17 July 2012 concluded between Abbott Products SAS (formerly Solvay Pharma) and C Consultant, which expired on 31 December 2012, for the promotion of products from Abbott Products on the Libyan market. This contract mentions that it takes over from the contract signed on 28 June 1994, which expired on "31 December 2011" and constitutes the new contractual framework for relations between Abbott Products and C Consultant. This contract expired on 31 December 2012.

This contract establishes commercial relationships between C Consultant on the one hand and on the other hand, Abbott Product SAS for the year 2012.

- A promotion contract dated 8 April 2013 concluded between Abbott Products SAS and Pharmalead (represented by its deputy managing director, Mr C) concerning the promotion of Abbott products on the Libyan market for the years 2013 and 2014.

- A second contract signed on 8 April 2013 between Pharmalead (represented by its deputy managing director, Mr. C.) and Abbott Laboratories (a Swiss company), expired on 31 December 2014, in order to ensure the promotion on Libyan soil of the portfolio of products from the ABBOTT range.

These two contracts establish commercial relationships between Pharmalead and Abbott Product SAS and Abbott Laboratories (a Swiss company) in 2013 and 2014. 2013 and 2014.

- On 1 January 2015, a Marketing and Promotion Service Agreement was entered into by Pharmalead with the Swiss company Abbott Products Operations AG.

This agreement establishes commercial relationships between Pharmalead on the one hand and on the other hand, the Swiss company Abbott Products Operations AG for one year in 2015.

30- It is apparent from those elements that commercial relations have been established since 1991 between, on the one hand, Mr C, working either on a personal basis or as a representative or consultant of various companies (Occitania Chemicals SA, R. C. Consultant, Pharmalead) and on the other hand, companies of the Solvay Group (the company Group Solvay Duphar BV, LTM, now Solvay Pharma) and then the Abbott Group (Abbott Products SAS, Abbott Laboratories, and Abbott Products Operations AG).

31- Although, as Pharmalead does not dispute in its written submissions, the operators and contractual 'instruments' were different during this period, there is no evidence of any contract concluded between the parties to the present dispute, namely Pharmalead and APD, or even transmitted to Pharmalead, or even of any direct commercial relationships between these same parties, which could be evidenced, in the absence of a written contract, by invoices or payments between these two companies.

32- In this regard, the sole fact that Pharmalead was able to have contacts with Abbott Products Distribution employees in 2015 for the administrative management of the contract signed in 2015 with Abbott Products Operations is not sufficient to characterise commercial relationships

established with that company.

33- Consequently, it shall be found that, in the absence of evidence of established direct commercial relationships with Abbott Products Distribution, Pharmalead, which cannot be confused with Mr C, who is not a party to the dispute, shall be dismissed from its action against that company alone, and there is no need to assess the abrupt nature of the termination and the alleged damages.

**On costs and expenses:**

34- Pharmalead, the losing party, shall be ordered to pay the costs of the proceedings.

35- In addition, it shall be ordered to pay compensation to Abbott Products Distribution, which had to incur unrecoverable costs to assert its rights, under Article 700 of the Code of Civil Procedure. This compensation could be fairly set at 7 000 euros to pay.

**IV – OPERATIVE PART**

**On these grounds, the Court hereby:**

1- Overturns the judgment of the Paris Commercial Court of 12 December 2020 in so far as it found the action brought by Pharmalead inadmissible;

And ruling again:

2- Dismisses Pharmalead's claims against Abbott Products Distribution;

3- Orders Pharmalead to pay Abbott Products Distribution the sum of 7,000 euros under Article 700 of the Code of Civil Procedure;

4. Orders Pharmalead to pay the costs of the proceedings.

*The Clerk*  
**C. GLEMET**

*The President*  
**F.ANCEL**