

# French company to fight ruling in US consumer suit

May 26 2014, by Martin Griffith

---

A Paris-based company says it will fight a U.S. judge's ruling against its attempt to force a Utah couple to pay a \$3,500 penalty over a critical online review.

Descoteaux Boutiques SARL, the parent company of online retailer Kleargear.com, issued separate statements this week saying John and Jen Palmer of Layton were aware of the company's "non-disparagement clause" in its sales contracts with customers.

"The non-disparagement agreements are not new among employees, partners and customers across the globe," Kleargear.com spokesman Vic Mathieu said in a statement. "Our sales contract is enforceable under the laws of the United States because business transactions are exempt from First Amendment rights ... If a customer disagrees with any merchant of policies, they are free to shop elsewhere."

U.S. District Judge Dee Benson entered a default judgment on April 30 in favor of the Palmers after Kleargear.com failed to respond to the couple's lawsuit over the \$3,500 penalty. He ruled the Palmers owe nothing to Kleargear.com, but the gadget retailer owes them a sum to be determined at a June court hearing.

Jen Palmer posted a critical review about Kleargear.com on RipoffReport.com after her husband never received two gifts he ordered for her, prompting Kleargear.com to notify the couple in 2012 that they had 72 hours to remove the negative review or pay \$3,500 because it

violated the non-disparagement clause.

The couple refused, saying the clause was not in effect when the items were purchased and the terms violated the First Amendment. They also note RipoffReport.com has a policy of not removing posted reviews.

Mathieu said Descoteaux Boutiques was never properly served the lawsuit in Paris under terms of the Hague Convention. He accused the couple's attorney, Scott Michelman of the Washington, D.C.-based nonprofit Public Citizen Litigation Group, of concealing that information from the court to improperly obtain a default judgment against the company.

Once the company is served, he said, it will move to vacate the judgment and "litigate" the case.

"If DBS is presented with an order for judgment on the above-mentioned civil action ... we will not honor it," Mathieu said. "In addition, such an invalid judicial resolution will not serve to dissuade Kleargear or other retailers from binding their customers to non-disparagement terms."

Mathieu also criticized John Palmer, saying he became "belligerent" toward employees and threatened to defame Kleargear.com if he did not receive free merchandise after his payment method was declined for an order in December 2008.

Jen Palmer denied the allegation and referred further questions to Michelman.

KlearGear.com notified credit bureaus of the couple's failure to pay, which led to a poor credit rating that delayed a car loan and prevented them from securing a loan for a broken furnace, according to the

couple's suit.

"If Kleargear decides to appear in court at long last, we welcome the opportunity to demonstrate that the Palmers are entitled to relief, either because of the company's default or on the merits," Michelman told KUTV-TV.

Michelman maintains the company's non-disparagement clause is "one-sided contractual fine print to try to bully unsatisfied customers into silence."

KlearGear.com sells a wide range of merchandise, including computer-themed gifts, apparel, gadgets and private label merchandise, according to its website.

© 2014 The Associated Press. All rights reserved.

Citation: French company to fight ruling in US consumer suit (2014, May 26) retrieved 27 April 2024 from <https://phys.org/news/2014-05-french-company-consumer.html>

<p>This document is subject to copyright. Apart from any fair dealing for the purpose of private study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.</p>
--