

Case law

Case Details

National ID: C-261/07 and C-299/07 (joined judgement)

Member State: European Union

Common Name: Total Belgium

Decision type: Court of Justice decision

Decision date: 23/04/2010

Court: Court of Justice of the EU

Subject:

Plaintiff: VTB-VAB NV (C-261/07) and Galatea BVBA (C-299/07)

Defendant: Total Belgium NV (C-261/07) and Sanoma Magazines Belgium NV (C-299/07)

Keywords: combined offers, full harmonisation

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 3, 1](#). Unfair Commercial Practices Directive, [Chapter 1, Article 1](#) Unfair Commercial Practices Directive, [Chapter 1, Article 2](#) Unfair Commercial Practices Directive, [Chapter 1, Article 4](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6](#)

Headnote

The UCP Directive undertakes a full harmonisation of unfair commercial practices. Member States are not allowed to adopt stricter rules, even in order to achieve a higher level of consumer protection. Hence, only those practices that are expressly listed as "unfair in all circumstances" can be generally prohibited by the Member States.

Combined offers are not listed by the UCP Directive as being "unfair in all circumstances". Accordingly, they cannot be prohibited per se by the Member States.

Facts

C-261/07: The defendant offered free car breakdown services for a period of three weeks to selected consumers who purchased a certain quantity of fuel. The plaintiff (a company operating in the car breakdown-service sector), brought an action before the Antwerp Commercial Court against this practice, which it found to breach the combined offer prohibition (as set forth by the then-current version of the Belgian Consumer Protection Act).

C-299/07: The defendant publishes various magazines on the Belgian market. In one of its magazines targeted at women, it offered vouchers for a discount of 15-25% in certain lingerie shops. The plaintiff (a Belgian lingerie shop), argued that the vouchers breach the combined offer prohibition.

Both cases were sent to the Court of Justice for a preliminary ruling.

Legal issue

Does the UCP Directive preclude the existence of a national rule that prohibits commercial practices other than those classified by the UCP Directive as practices qualifying as unfair "in all circumstances"?

Decision

The UCP Directive undertakes a full harmonisation at Community level, meaning that Member States may not adopt stricter rules than those provided in the Directive. Consequently, Member States may not impose any prohibition in principle on commercial practices other than those classified by the UCP Directive as practices regarded as unfair "in all circumstances".

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Legal Literature

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Member State: Belgium

Title: The Court of Justice clarifies the scope of Directive 2005/29/EC with regard to combined offers

Author: L. DE BROUWER

Member State: European Union

Title: Fair Game

Author: R. LAWSON

Member State: European Union

Title: Full harmonisation of unfair commercial practices under Directive 2005/29

Author: H. MICKLITZ

Member State: Greece

Title: Additional benefits and other commercial practices as interpreted by the ECJ jurisprudence in light of the Directive 2005/29/EC on unfair commercial practices - towards a radical change in the assessment of unfair trade practices regarding the Business to Consumer relationship (B2C)

Author: M.-TH. MARINOS

Result

A national rule that imposes a per se prohibition (irrespective of any verification of their actual unfair nature) on combined offers, contravenes the UCP Directive.

Following this judgment, Belgium has repealed the prohibition on combined offers (Law of 6 April 2010 on market practices and consumer protection).