

Case law**Case Details**

National ID: AWB 09/2114 BC-T2

Member State: Netherlands

Common Name: link

Decision type: Court decision, first degree

Decision date: 06/07/2009

Court: District Court Rotterdam

Subject:

Plaintiff: TRE Investments II BV

Defendant: Stichting Autoriteit Financiële Markten

Keywords: average consumer, general scope of the UCP Directive, invitation to purchase, material information

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 3, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 4](#).

Headnote

The notion material information does not only concern the information which has to be provided during the invitation to purchase the product, but also concerns facts and circumstances during the term of the agreement.

Facts

The plaintiff did not provide bondholders, during the term of the agreement, with material information concerning the financial and legal position of the former. The bondholders were not informed on the causes of, amongst others, the liquidity deficit and the non-payment of the interests.

Legal issue

The court referred to article 6:193a Dutch Civil Code, which defines a commercial practice. The court stated that this definition cannot be interpreted in a restricted way, as the provision would then lose its meaning. Accordingly, the court concluded that the obligation to provide material information equally applies during the execution of an agreement. The court added that this interpretation is in compliance with article 3, 1 of the UCP Directive.

The court considered that the plaintiff did not provide the bondholders with material information concerning the financial and legal position of the plaintiff. Plaintiff omitted material information that the average consumer, the bondholder, needed to take an informed transactional decision and thereby caused or was likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

Decision

Does article 6:193d Dutch Civil Code concerning misleading omissions (and the obligation to provide material information), also apply during the term of an agreement?

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result

Plaintiff was held to have committed a misleading omission.