

Case law

Case Details

National ID: link

Member State: Belgium

Common Name: UPEA SA; DKV SA; AXA Royale Belge SA; Fortis SA / Solimut; MC; e.o.

Decision type: Other

Decision date: 23/05/2003

Court: Hof van Beroep (NL)/Cour d'appel (FR) (Appellate court, Brussel)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Distance Selling Directive, [Article 9](#)

Headnote

The request for a payment relating to an extended coverage of a sickness insurance does not constitute inertia selling when it is addressed to members of the healthcare insurance organization who have agreed to receive offers for services that concern them.

Facts

Solimut is a concern of healthcare insurance organisations. Members of the healthcare insurance organisations belonging to the concern, are automatically members of Solimut.

The healthcare insurance organizations offer their members two types of healthcare insurances: the legal insurance, which is obligatory for all citizens, and additional insurances, which are not compulsory.

On 1/1/2000, the general assembly of Omnimut decides to make one of the additional insurances, Hospi Solidaire, compulsory for all its members. The insurance premium of all the members is consequently raised. Members who do not pay the part of the premium that is related to the additional insurance Hospi Solidaire, may be excluded from Omnimut and from its healthcare insurance organization.

Certain members protest against this premium raise, claiming that they do not need nor use the additional insurance, since the costs covered by it, are also covered by their group or private insurance. They see the practices of Omnimut as a forced sale.

Legal issue

The court finds that none of the parties contest the fact that members of the healthcare insurance organization benefit from the healthcare insurance services because they are members. To become and stay a member, one must pay the insurance premium.

It is the opinion of the court that members of a healthcare insurance organisation are bound by the rules of that organisation, as specified in the statutes of the organisation. The general assembly has the competence to amend their statutes.

The court finds that the statutes were changed in conformity with the rules laid down in the Act of 6/8/1990 regulating the healthcare insurance organizations. Parties do not contest that the general assembly had the power to make certain additional insurances obligatory and consequently charge for this additional service.

The court therefore concludes that the fact that certain members do not make use of some of the obligatory services does not imply that these members are forced into paying for these services in the meaning of Article 76, 1st sentence of the Act of 14 July 1991. As a member of the organisation, all of them agreed to pay for the services which are categorised as obligatory in the statutes of the organization.

Decision

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