

Case Details

Case Details

National ID	link
Member State	Belgium
Common Name	Vereniging Vlaamse Reisbureaus v.z.w / Jetair n.v.
Decision type	Other
Decision date	17/01/2002
Court	Rechtbank van Koophandel Brugge (Court of first instance)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Package Travel Directive, [Article 4, 2](#). Package Travel Directive, [Article 4, 6](#). Package Travel Directive, [Article 5, 2](#).

Headnote

All contractual conditions need to be communicated to the traveller in writing before the conclusion of the contract (Article 7 Act of 16 February 1994 regulating the package travel contracts and the travel intermediation contracts ("Travel Act")).

Excluding one's liability in the event of unforeseen circumstances occurring during a trip is an infringement of Articles 18 and 19 of the Travel Act.

Facts

By writ of 16 November 2001 the Vereniging Vlaamse Reisbureaus v.z.w., the claimant, initiated an action for injunction before the President of the Commercial Court of Bruges.

The claimant basically brings forward the following arguments:

- the brochure "Jetair Citytrips Winter 2001-2002", which is edited and distributed by Jetair, does not contain the general travelling conditions which are agreed upon in the sector and which are known as the "Travelling Conditions Travel Arbitration Board" ("Reisvoorwaarden Geschillencommissie Reizen");
- solely an "A.B.T.O. booklet" is handed out to the traveller after the booking, together with the travelling documents;
- the brochure does not even mention that the "Travelling Conditions Travel Arbitration Board" can be found in the "A.B.T.O. booklet";
- n.v. Jetair infringes Article 7 of the Travel Act, which indicates that the general conditions applicable to the contract have to be communicated to the traveller before the conclusion of the contract.

The defendant argues firstly that the claimant's claim is inadmissible because of the lack of interest.

Legal issue

Concerning the interest of the claimant:

According to Article 98 §1 No 3 of the TPA an action for injunction can be initiated by a professionals' or interprofessionals' organisation with legal personality, unless the action concerns Article 94 of the TPA regarding

unfair trade practices against consumers.

The acts which the claimant disputes are not solely acts which fall within the scope of Article 94 TPA, but acts which fall within the scope of Article 93 of the TPA which prohibits sellers to commit unfair trade practices towards other sellers.

As a professional's organisation for travel agencies with legal personality, the claimant possesses the required interest to initiate an action for injunction against acts which damage or could damage the professional interests of travel agencies. Hence, the claim is admissible.

Concerning the "A.B.T.O. booklet":

The claimant argues that the section "A.B.T.O. booklet" of the chapter "Good to know" of the brochure is unlawful. This section states: "As from this brochure you will receive together with the vouchers of your reservation an A.B.T.O. booklet. This replaces the A.B.T.O. page which used to be contained in the back of our brochures. When you entrust a member of the A.B.T.O. with the organisation of your holiday, a number of guarantees are included. As an A.B.T.O. member it is our duty to supervise that the travelling conditions of the Travel Arbitration Board are applied and that our travel activities are in conformity with several legal provisions. Doing so you will be as a customer secured of the quality for prices which you, as a customer, usually cannot obtain".

According to Article 7 No 1, b of the Travel Act, the travel organiser has to communicate the general conditions applicable to the contract to the traveller before the conclusion of the contract.

The defendant however communicated the general conditions applicable to the contracts "Jetair Citytrips Winter 2001-2002" to the travellers only partially before the conclusion of the contract by certain mentions in the brochure and partially after the conclusion of the contract by handing over the A.B.T.O. booklet, which contains the "Travelling Conditions Travel Arbitration Board".

This method of working is not in conformity with Article 7 No 1, b of the Travel Act insofar as the "Travelling Conditions Travel Arbitration Board" are only communicated after the conclusion of the contract.

Concerning the section "unforeseen circumstances" and Article 3 of the defendant's travelling conditions

The claimant furthermore argues that the section "unforeseen circumstances" of the chapter "Good to know" is unlawful. This section states: "Jetair Citytrips cannot be held liable for:

- inconvenience because of working activities (e.g. road, housing) in the neighbourhood of the hotel;
- loss, theft, injury or any other damages occurred during the holiday;
- limited opening hours of shops, leisure facilities and party addresses during, e.g., holidays and so called "long weekends" ("brugweekends");
- faults or mistakes in the brochure (if possible we warn you through the travel agent about alterations in the brochure before you book or depart)".

The claimant also raises objections concerning Article 3 of the section "liability" in the defendant's travelling conditions, which a.o. states that the travel organiser is not liable for unforeseen circumstances such as technical defects, accidents, strikes, epidemics, wars, ... and that the extra costs resulting from these unforeseen circumstances can be attributed to the travellers.

The court furthermore notices that also Article 14 of the "Travelling Conditions Travel Arbitration Board", which is not considered to be unlawful by the claimant, concerns the liability of travel organisations.

By spreading the contractual provisions concerning liability over three sections – namely "unforeseen circumstances", "liability" and Article 14 of the "Travelling Conditions Travel Arbitration Board" – the defendant, albeit with good intentions and without any view to mislead the traveller, undermines the overall transparency of the document. Moreover, the contractual provisions of the sections "unforeseen circumstances" and "liability" are not in conformity with Articles 18 and 19 of the Travel Act insofar as the defendant cannot be held liable for damages encountered in the course of the trip and for unforeseen circumstances. The same provisions are also contrary to Article 14 of the "Travelling Conditions Travel Arbitration Board" which itself is in conformity with the Travel Act.

Therefore, the claimant's action for an injunction is to be adjudicated. With regard to the brochures which still are in the possession of the defendant, the defendant needs to enclose an annex which contains the integral text of the "Travelling Conditions Travel Arbitration Board" and which mentions that her liability is laid down in Article 14 of the latter document instead of referring to the unlawful provisions contained in the sections "unforeseen circumstances" and "liability". With regard to the brochures which are already in the possession of travel agencies, the defendant needs to send to the travel agencies enough copies of the annex by registered letter within 8 days from the serving of the verdict and communicate to them that they are solely entitled to spread the brochure together with the annex.

Decision

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