

Case law

Case Details

National ID: 6 W 54/08

Member State: Germany

Common Name: link

Decision type: Court decision, first degree

Decision date: 04/06/2008

Court: Higher Regional Court (Frankfurt on the Main)

Subject:

Plaintiff: not disclosed

Defendant: not disclosed

Keywords: guarantee, information obligation, unfair competition

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(d\)](#) Unfair Commercial Practices Directive, [Chapter 1, Article 3, 1.](#)

Headnote

An illegal provision in terms and conditions regarding product guarantee falls within the scope of (the national implementation of) the UCP Directive.

Facts

The defendant used the following invalid clause within its general terms and conditions: "24 month warranty on this product!".

The plaintiff requested a cease-and-desist order for the further use of this clause.

Legal issue

The court considered that the defendant's clause infringes § 477 I BGB (German Civil Code), because mandatory information obligations were not complied with. In particular, the clause did not mention the additional consumer rights according to § 477 I BGB.

The court also found that § 477 I BGB is a market conduct rule (in the sense of § 4 Nr. 11 UWG), so that the violation of the civil law rule of § 477 I BGB is able to constitute a violation under unfair competition law according to § 4 No. 11 UWG.

The court furthermore considered that the use of invalid general terms and conditions can be challenged by competitors on the basis of §§ 3, 4 Nr. 11 UWG. Since the UCP Directive also covers commercial practices after conclusion of a contract (see article 2(d) and 3, item 1 of the UCP Directive) an interpretation of the UWG in accordance with the UCP Directive results in the finding that the use of invalid general terms and conditions falls under unfair competition law.

Decision

Is the use of invalid general terms and conditions a violation of § 4 Nr. 11 UWG (the German Unfair Competition Act)?

Is § 477 I BGB (German Civil Code) a regulation regarding the market conduct that falls within the scope of § 4 No. 11 UWG?

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Related Cases

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Legal Literature

No results available

Result

The plaintiff's request was granted. The complaint of the defendant against the cost decision in a preliminary injunction proceeding was dismissed.