

Case law

Case Details

National ID: 22 O 100/08

Member State: Germany

Common Name: link

Decision type: Court decision, first degree

Decision date: 24/11/2008

Court: Regional Court (Darmstadt)

Subject:

Plaintiff: Not disclosed

Defendant: Drug store - name not disclosed

Keywords: black list, code of conduct, misleading commercial practices, quality mark, trust mark

Directive Articles

Unfair Commercial Practices Directive, [Annex I, 2.](#)

Headnote

(1) Consumers are misled when a quality mark for mail-order pharmacies gives the impression that the pharmacy fulfils higher quality standards, while in fact no such verification was accomplished by obtaining the respective quality mark.

(2) Consumers are misled by a quality mark when the false impression is created that the approval was granted by a neutral body that has the right to award quality marks by an official acceptance procedure, while in fact the quality mark was awarded by an association of which the awarded company is itself a member.

Facts

The defendant, a mail-order pharmacy, advertised with the quality mark "Approved by BVDVA".

This quality mark was awarded to all pharmacies that paid a certain license fee and submitted a pledge to fulfil certain quality standards. However, no verification of this pledge had actually taken place by the awarding association ("BDVA"), of which the defendant was a member.

The plaintiff requested a cease-and-desist order for the use of this quality mark.

Legal issue

The usage of this quality mark was considered to violate §§ 3, 5 UWG (the German Unfair Competition Act). The usage of the quality mark was misleading because the consumer would think that (1) the pharmacy was approved by a neutral association that had undergone an official acceptance procedure in order to grant such quality marks; and (2) the pharmacy fulfils higher quality standards than other pharmacies that were not approved by the association BVDVA.

Decision

Does the (national implementation of the) UCP Directive allow seals of approval when the issuer of the quality mark has not properly verified whether the requirements for granting this quality mark are effectively met?

Full text: [Full text](#)

Related Cases

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Legal Literature

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Result

The plaintiff's request was granted.