

Case law

Case Details

National ID: 5 W 80/10

Member State: Germany

Common Name: link

Decision type: Court decision in appeal

Decision date: 28/06/2010

Court: Higher Regional Court (Hamburg)

Subject:

Plaintiff: Association for the Promotion of Commercial and Independent Business Interests

Defendant: not disclosed

Keywords: black list, editorial content, misleading advertising

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2](#). Unfair Commercial Practices Directive, [Annex I, 11](#).

Headnote

The use of editorial content by a trader for purposes of promotion is a violation of the German unfair competition law if the purpose cannot be identified based on the context, content or by the type of the visual or acoustic presentation.

Facts

The defendant published an article as editorial content about a company with the headline "Mother's Day: Win a travel to Paris". This article was disguised as editorial content, but was in fact an advertisement.

The plaintiff requested a cease-and-desist order for this article.

Legal issue

The court found that the respective article, which was financed by the company by granting the advertised prizes, was disguised as editorial content, but was in fact an advertisement for the company.

According to the court, such type of advertisement constitutes a violation of German unfair competition law (UWG), as consumers received the impression that the article was objective content, instead of an advertisement. This caused the consumers to be misled, so that this "article" constitutes a violation of Annex no. 11 to § 3 III UWG.

Moreover, according to § 10 Hamburgisches PresseG (Press Law Act of the City Hamburg) this newspaper article should have been clearly titled as advertisement. This infringement of § 10 Hamburgisches PresseG constitutes a violation of §§ 3, 4 No. 11 UWG.

Decision

Is it unfair to disguise a prize contest as editorial content?

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Legal Literature

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Result

The plaintiff's request was granted.