

Case law

Case Details

National ID: 4 Ob 174/09f

Member State: Austria

Common Name: link

Decision type: Supreme court decision

Decision date: 19/01/2010

Court: Austrian Supreme Court (Vienna)

Subject:

Plaintiff:

Defendant:

Keywords: aggressive commercial practices, identity of the trader, inaccurate information, misleading commercial practices, misleading statements, nature of the trader, unwanted solicitations

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1.](#) Unfair Commercial Practices Directive, [Chapter 2, Section 2, Article 8](#) Unfair Commercial Practices Directive, [Annex I, 26.](#)

Headnote

Sending a single letter to a person does not qualify as "persistent and unwanted solicitations", as described in Annex I-26 of the UCP Directive. The actual content of this letter may, however, qualify as a misleading advertisement when the sender gives the wrongful impression that he will offer certain services, while in reality these services will be provided by another party.

Facts

An insurance adviser searched newspaper and electronic articles for reports on accidents. Once found, he tried to identify the accident victim (which usually was only partially indicated in the newspaper article, e.g., by mentioning the first name, the initial letter of the second name, and the town of residence) by different means, including access to public registries and telephone calls to various persons, such as other local residents.

Once an accident victim had likely been identified, the insurance adviser sent a standard letter, offering advice on and help with compensation issues. He also mentioned that in case of a court dispute, there are qualified lawyers ready to deal with the case.

The insurance adviser was no lawyer, and had no contractual relationship to any lawyer, but would simply recommended lawyers which in his view were specialized in insurance / compensation matters.

The plaintiff sought to prohibit the described behavior on the basis of aggressive and misleading advertisement.

Legal issue

(1) The court considered that the act of sending letters to accident victims, although not expressly mentioned in Annex I-26 of the UCP Directive, may in certain circumstances be prohibited on the basis of Annex I-26 of the UCP Directive.

However, in this particular case (where only one single letter was sent, without a preceding or actual contradiction by the recipient), the insurance adviser's actions were not deemed to constitute "persistent and unwanted solicitations" in the sense of Annex I-26 of the UCP Directive. The court also considered that the described practice (in particular collecting information and subsequently sending a letter) does not amount to aggressive advertisement in general.

(2) The court also considered the content of the letter to be misleading, as the accident victim would get the wrong impression that the insurance adviser's offer includes legal presentation in the case of a court dispute (while in reality the insurance adviser would in such case only recommend one or more lawyers, whereby a separate contract for representation in the legal dispute would have to be concluded with the lawyer). The court considered that the letter would appreciably impair the consumer's ability to make an informed decision.

Decision

(1) Does the act of sending letters to accident victims constitute an aggressive advertisement (persistent and unwanted solicitations), as defined in Annex I-26 of the UCP Directive?

(2) Is the content of the letter misleading as regards the representation in court cases by qualified attorneys?

URL: http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20100119_OGH0002_0040OB00174_09F0000_000

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Result

The plaintiff's request was granted as regards (2) misleading advertisement, and dismissed as regards (1) aggressive advertisement.