

## Case law

### Case Details

**National ID:** C-122/10

**Member State:** European Union

**Common Name:** Ving

**Decision type:** Court of Justice decision

**Decision date:** 12/05/2011

**Court:** Court of justice

**Subject:**

**Plaintiff:** Konsumentombudsmannen

**Defendant:** Ving Sverige

**Keywords:** invitation to purchase, price, transactional decision, travel

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(i\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 4., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 4., \(c\)](#)

### Headnote

A commercial communication is considered to be an invitation to purchase as soon as the information on the product and its price is sufficient for the consumer to be able to make a transactional decision. A reference only to an entry-level price in an invitation to purchase cannot be regarded, in itself, as constituting a misleading omission.

### Facts

The defendant is a travel agency which arranges charter holidays and package holidays using scheduled flights.

The defendant put a commercial communication in a daily Swedish newspaper offering trips to New York between September and December 2008. That advertisement printed the following information in bold: "New York from SEK 7 820", and the following information in smaller letters: "Flight from Arlanda with British Airways and 2 nights in the Bedford Hotel – Price per person in double room including airport taxes. Extra nights from SEK 1 320. Applies to selected trips from September to December. Limited number of places" and, at the very bottom left side of the advertisement "Vingflex.se Tel. 0771-995995".

The plaintiff, a consumer organisation, sought to order the defendant to state fixed prices in its advertisements and be prohibited, on pain of a penalty, from advertising an entry-level price (such as "from SEK 7 820"). It furthermore requested that the defendant be ordered to give more exact details of how and in which way the main characteristics of the trip — such as the departure time, the consumer's options or corresponding characteristics — affect the entry-level price given in the commercial communication.

### Legal issue

(1) Does the requirement "thereby enables the consumer to make a purchase" in Article 2(i) of the UCP Directive means that an invitation to purchase exists as soon as information on the advertised product and its price is available so that the consumer may make a decision to purchase, or is it necessary that the commercial communication also offers an actual opportunity to purchase the product (e.g., an order form) or that it appears in connection with such an opportunity (e.g., an advertisement outside a shop)?

(2) Does displaying a telephone number or website address qualify as an actual opportunity to order the product?

(3) Is the requirement for a price in Article 2(i) met when the commercial communication only contains an entry-level price (while the advertised products are also available in other versions at other prices)?

(4) Is the requirement to indicate product characteristics in Article 2(i) met when there is a verbal or visual reference to the product (so that the product is identified but not further described)?

(5) If the answer to the fourth question is affirmative, does that also apply when the product is offered in many versions, while the commercial communication refers to them only by a common designation?

(6) If there is an invitation to purchase, is it then sufficient for Article 7(4)(a) of the UCP Directive to give only certain of a product's main characteristics and to refer to a website for additional information?

(7) Is the requirement for the price in Article 7(4)(c) met when only an entry-level price is given?

### Decision

The Court of Justice explained that it is for the national court to ascertain, on a case-by-case basis, whether the consumer had sufficient information to take a

transactional decision. With regard to the specific questions, the Court of Justice answered the following:

(1) An invitation to purchase exists as soon as the information on the product and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication to also offer an actual opportunity to purchase the product or for it to appear in connection with such an opportunity.

The words 'thereby enables the consumer to make a purchase' of the UCP Directive must be analysed not as adding a further condition to categorisation as an invitation to purchase, but as stating the purpose of the requirements set out with regard to the characteristics and the price of the product, so that the consumer has sufficient information to make a purchase. Consequently, for a commercial communication to be capable of being categorised as an invitation to purchase, it is not necessary for it to include an actual opportunity to purchase or for it to appear in proximity to and at the same time as such an opportunity.

(2) In light of the answer to the first question, it was not necessary for the court to answer the second question.

(3) The requirement relating to the indication of the price of the product may be met if the commercial communication contains an entry-level price, even when the advertised product or category of products are available in other versions or with other content at prices which are not indicated.

The price of the product must be indicated in a way appropriate to the means of the commercial communication used. Depending on the medium used and the nature of the products, it is accepted that a trader may not reasonably be able to communicate the final price in advance.

(4) and (5) A verbal or visual reference to the product makes it possible to meet the requirement relating to the indication of the product's characteristics, and that includes a situation where such a verbal or visual reference is used to designate a product which is offered in a variety of forms. A verbal or visual reference may enable the consumer to form an opinion on the nature and characteristics of the product for the purpose of taking a transactional decision, and that includes a situation where such a reference designates a product which is offered in many versions. An entry-level price may enable the consumer to understand that the product which he has been able to customize exists in other versions.

The commercial medium of communication used must be taken into consideration: the same degree of detail cannot be required in the description of a product irrespective of the form – radio, television, electronic or paper – which the commercial communication takes.

(6) The extent of the information relating to the main characteristics of a product which has to be communicated, by a trader, in an invitation to purchase, must be assessed on the basis of the context of that invitation, the nature and characteristics of the product and the medium of communication used. It may be sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirements in Article 7 of that directive.

(7) A reference only to an entry-level price in an invitation to purchase cannot be regarded, in itself, as constituting a misleading omission. The extent of the information relating to the price will be established on the basis of the nature and characteristics of the product, but also on the basis of the medium of communication used for the invitation to purchase and having regard to additional information possibly provided by the trader.

A reference only to an entry-level price may, therefore, be justified in situations where the price cannot reasonably be calculated in advance, having regard, inter alia, to the nature and characteristics of the product. For example, in the travel industry, in order to establish the final price of a trip, a certain number of variable factors may be taken into consideration, such as the point at which a booking is made; the interest in the destination on account of the existence of religious, artistic or sports events; the particular characteristics of seasonal conditions; and the dates and times of travel.

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#### **Related Cases**

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#### **Legal Literature**

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#### **Result**

The plaintiff's request was granted as regards (1) and dismissed as regards (4), (5), (6) and (7).