

## Rechtsprechung

### Rechtssachenbeschreibung

**Nationale Kennung:** 4 Ob 26/09s

**Mitgliedstaat:** Österreich

**Gebrauchliche Bezeichnung:** Bonusprogramm

**Art des Beschlusses:** Beschluss des Obersten Gerichts

**Beschlussdatum:** 09/06/2009

**Gericht:** Oberster Gerichtshof, Wien

**Betreff:**

**Kläger:** Unknown

**Beklagter:** Unknown

**Schlagworte:** black list, conditional promotions, national law

### Artikel der Richtlinie

Unfair Commercial Practices Directive, [Annex I, 14](#).

### Leitsatz

The Austrian Supreme Court ruled on the interaction of the different Austrian provisions relating to a pyramid promotional scheme.

### Sachverhalt

The defendant, a life assurances seller, sold its products by advertising towards its customers that they could receive premium reductions in case that they would recruit new customers using the product for a certain time. The amount of the reduction depended on the number and levels of new clients.

The plaintiff claimed that such advertising was in breach of Annex I-14 and § 27 of the Austrian Unfair Competition Act (UWG), both prohibiting pyramid schemes.

After the implementation of the UCP Directive, § 27 of the UWG, already prohibiting the sale of products following a pyramid scheme, was not changed. Instead, only a reference to Annex I-14 was added, stating that "Annex I-14 rests unaffected" (of the provision of § 27). Annex I-14 is nearly a word-for-word translation of Annex I-14 UCP Directive.

### Rechtsfrage

Does the practice of offering reductions for consumers who recruit new customers for the trader, constitute a promotion of a pyramid scheme in view of Annex I-14 and § 27 UWG?

### Entscheidung

The court first ruled that the current practice does not constitute a pyramid scheme in the sense of the UWG, as Annex I-14 was implemented with a reference to § 27 UWG.

According to the definition in § 27 UWG, a pyramid scheme requires an unconditional obligation of the customer on the one hand and a conditional obligation of the trader on the other hand. According to the court, this was not the case here, as the obligations of the defendant were only based on the contract with the insurance holder.

The court expressly stated that it was not necessary to examine whether the UCP Directive requires a different interpretation of Annex I-14 UWG in a way to include also pyramid schemes not included in § 27, (Annex I-14) UWG, as the current practice was certainly unfair in view of § 1 UWG (general provision on unfair commercial practices).

URL: <http://www.ris.bka.gv.at/Dokument.wxe?>

Abfrage=Justiz&Dokumentnummer=JJT\_20090609\_OGH0002\_0040OB00026\_09S0000\_000&ResultFunctionToken=c03d868f-ec4a-4c69-bb2c-a432bf7a384b&Position=1&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachRechtssatz=False&SucheNachVonDatum=&BisDatum=14.06.2011&Norm=&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=

Volltext: [Volltext](#)

### Verbundene Rechtssachen

Keine Ergebnisse verfügbar

### Rechtsliteratur

Keine Ergebnisse verfügbar

### Ergebnis

The plaintiff's request was granted.