

## Case law

### Case Details

**National ID:** 4 Ob 159/09z

**Member State:** Austria

**Common Name:** Sanovit Mystic

**Decision type:** Supreme court decision

**Decision date:** 20/04/2010

**Court:** Supreme Court (Vienna)

**Subject:**

**Plaintiff:** N/A

**Defendant:** N/A

**Keywords:** authorisation, black list, endorsement, misleading commercial practices, quality mark, trust mark

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1.](#) Unfair Commercial Practices Directive, [Annex I, 2.](#) Unfair Commercial Practices Directive, [Annex I, 4.](#)

### Headnote

(1) Referring to an outdated quality test constitutes a misleading commercial practice.

(2) It is uncertain whether a quality test can classify as a trust mark, quality mark or equivalent.

(3) A sole quality test does not qualify as an approval, endorsement or authorisation by a public or private body.

### Facts

The defendant promoted its products (mattresses) using an award ("test winner") which was granted several years ago by the plaintiff, a consumer protection organisation, in order to mark the winner of product tests conducted by the plaintiff.

Although the test was indeed conducted, there was no mattress which was awarded to be "very good", a "good" was the best assessment and sixteen other mattresses were also found to be "good". The defendant's mattress, however, received the most points, finally having the best overall assessment.

The plaintiff warned the defendant already by the end of 2007 to stop using the more than three years old test result for advertising purposes, as this was contrary to the plaintiff's general rules for advertisement with such test results. Defendant argued that he had been awarded the best product and that no other test regarding mattresses had since been conducted.

### Legal issue

According to the decision, the defendant's strategy of advertising, using the results of an outdated test, violates section 2 paragraph 1 item 2 of the Unfair Competition Act, because it neither referred to the results of the other mattresses nor to the test date. In addition, the court affirms the advertising's deception suitability and it is therefore considered a misleading business practice.

The court did not rule whether the current practice was also prohibited by item 2 of the Annex I to the UCP Directive (black list practice). However, the court did state that it was disputed in legal literature whether the awards were to be qualified as a "trust mark, quality mark or equivalent".

As regards item 4 of the Annex I, the court held that the present commercial practice did not constitute a breach of this provision, as a sole test result would not be understood as "public or private approval, endorsement or authorisation".

### Decision

(1) Does referring to an outdated quality test constitute a misleading commercial practice?

(2) Does a quality test classify as a trust mark, quality mark or equivalent (in the sense of item 2 of Annex I to the UCP Directive (black list))?

(3) Does a sole quality test qualify as an approval, endorsement or authorisation by a public or private body (in the sense of item 4 of Annex I to the UCP Directive (black list))?

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### Related Cases

No results available

### Legal Literature

No results available

### Result

The plaintiff's request was partly granted.