

Case law

Case Details

National ID: 5 U 93/11

Member State: Germany

Common Name: link

Decision type: Court decision in appeal

Decision date: 21/10/2011

Court: Higher Regional Court (Berlin)

Subject:

Plaintiff: pc GmbH

Defendant: TD GmbH

Keywords: confusion, distance contracting, doorstep selling, information obligation, information requirements, informed decision, misleading omissions, precontractual information

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 5](#).

Headnote

A trader, making use of means of electronic signature via postal services, has the obligation to clearly inform the consumers on the validity and effects of such signature.

Facts

The defendant used a mail service offered by Deutsche Post to approve the identity of persons known as "PostIdent". Within this PostIdent process the consumer signs a document and the postman confirms the identity of the signing person by adding some information of the consumer's thereby presented identity card.

The defendant used these services by sending its contractual offer by mail. The consumer's signature constituted the acceptance of this offer after which the postman handed over the contractual documents. Before sending its offer via PostIdent the defendant gave the consumer/customer some general information on the contract during a telephone call.

The court of first instance held the defendant's behaviour to contravene the law against unfair competition on the basis of misleading commercial practices. The defendant appealed against the decision of the first instance arguing that the consumer pays special attention to the respective PostIdent process and is thus not misled.

Legal issue

The court held that if a consumer declares his contractual will by signing a paper delivered by the postman and thus concludes a valid contract by means of doorstep selling, the legal effect of the signature is a material information (Art 7 UCP Directive) and must therefore be explained to the consumer in a clear and unambiguous manner.

Otherwise, as the consumer is not used to such a practice it is rather likely that he is tricked into an agreement by the trader because he will be mistaken in his estimation of his signature as being a mere acknowledgement of receipt of the respective mailing.

Omission to provide information on the legal effects of the consumer's signature, which must be clear and unambiguous, constitutes a misleading omission according to §§ 5 a II, IV UWG (Art 7 section (1) and (5) UCP Directive).

Decision

Does a trader, making use of means of electronic signature via postal services, have the obligation to clearly inform the consumers on the validity and effects of such signature?

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Result

The court dismissed the appeal. The plaintiff's request was granted.