

Jurisprudence

Informations concernant l'affaire

ID national: No. 09/09169

État membre: France

Nom commun: N/A

Type de décision: Décision de justice faisant l'objet d'un recours

Date de la décision: 05/05/2011

Juridiction: Cour d'appel, 3ème chambre (Versailles)

Objet:

Demandeur: UFC Que Choisir

Défendeur: SAS Hewlett Packard HP France

Mots clés: misleading price, price, price information, professional diligence, transactional decision

Articles de la directive

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

Note introductive

The sale of a product, combined with a pre-installed additional product, without indicating the price of the latter product to the consumer and without informing the consumer of the possibility to buy the former product without the pre-installed additional product constitutes an unfair commercial practice.

Faits

Plaintiff claimed that defendant, a company selling computer software and hardware, was selling computers that were pre-equipped with an operating system via its online sales platform, without indicating the price of each separate product of which the package consisted and without informing the consumer of the possibility to buy the computer without the operating system.

Plaintiff argued that defendant's commercial practice violated article L. 122-1 of the French Consumer Code, which prohibits conditional sales and article L. 120-1 of the French Consumer Code on unfair commercial practices.

Plaintiff argued that in violation of article L. 121-1 of the French Consumer Code, defendant concealed "essential" information to the customers, which would have been useful to them in order for them to make a transactional decision.

Question juridique

Does the sale of a product, combined with a pre-installed additional product, without indicating the price of the latter product to the consumer and without informing the consumer of the possibility to buy the former product without the pre-installed additional product constitute an unfair commercial practice?

Décision

The court first held that selling computers with pre-installed operating systems on a website open to the public, without informing consumers of the price of the pre-installed software and without the possibility of refusing the software, constitutes an unfair commercial practice falling within the purview of article L. 121-1 of the French Consumer Code.

Such a commercial practice was further ruled to be contrary to professional diligence as it was established that it was not technically possible to uninstall the pre-installed software. In addition, the court held, such a practice is likely to substantially influence the economic behavior of the average consumer, as consumers will not be able to compare the price of the software with others or with computers without pre-installed software.

The court further held that such a practice is also a misleading commercial practice because insufficient information was given to the consumers who could be misled in the context of their transactional decision.

In its ruling, the court referred to articles 5, 6 and 7 of the UCP Directive.

Texte intégral: [Texte intégral](#)

Affaires liées

Aucun résultat disponible

Doctrine

Aucun résultat disponible

Résultat

The plaintiff's request was granted.