

Case law

Case Details

National ID: 136/2011

Member State: Cyprus

Common Name: 136/2011

Decision type: Supreme court decision

Decision date: 07/11/2013

Court: Supreme Court of Cyprus

Subject:

Plaintiff: Akis Ioannou

Defendant: Republic of Cyprus acting through the Ministry of Trade, Industry and Tourism

Keywords: general scope of the UCP Directive, health and safety, material information, misleading advertising

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(b\)](#)

Headnote

Non-profit making organizations do not constitute “traders” and their practices do not constitute “commercial practices” within the meaning of the EU Directive 2005/29/EC?

Facts

The case concerned a complaint by the plaintiff to various authorities (including the Commission) on the basis that the members of the Cyprus Ophthalmological Society (hereinafter the “COS”) made certain defamatory and misleading references concerning the effectiveness of a laser machine which the plaintiff imported and had been using for a period as an optician. The plaintiff alleged that these statements were in breach of the Unfair Commercial Practices Act.

The defendant replied to this complaint by saying that the statements made by COS were not made within the course of any trading whatsoever and did not constitute a commercial practice directed at consumers, hence did not fall within the ambit of the Unfair Commercial Practices Act and Directive 2005/29/EC and thus could not examine the complaint.

The plaintiff replied arguing that organisations like COS qualify as a “business association”, regardless of the fact that they are a non-profit making organisation, and are thus in a position to engage in unfair competition in the context of representing their members and promoting their interests.

The defendant argued that COS and other similar organisations, whose members are companies or business associations, should not be considered to be conducting business activities for the purposes of the relevant law.

Legal issue

The court held that COS and professional associations in general cannot be considered to be “traders” as the definition of “traders” encompasses the practicing of trading activities with a commercial character. The court nonetheless emphasized that this does not preclude a public organization to fall within the above definition.

Additionally, the court highlighted that it is irrelevant that the defamatory statements were made in the course of a press conference of COS, as this is not a factor that would preclude an otherwise undisputed “trader” from falling within the provisions of the Unfair Commercial Practices Act and the Directive 2005/29.

Decision

Do non-profit making organizations constitute “traders” and do their practices constitute “commercial practices” within the meaning of the EU Directive 2005/29/EC?

Full text: [Full text](#)

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Result

Plaintiff's request nevertheless succeeded. This was a result of the fact that the court rather focused on the fact that the defendant, as the supervising authority, was under a duty to inquire into whether the statements made by COS fell within the situations that the plaintiff complained of, instead of dismissing the complaint on the basis that COS's did not fall within the ambit of the Unfair Commercial Practices Act and the Directive.