

Case law

Case Details

National ID: OLG Köln, Urteil v. 21.09.2012 - 6 U 14/12

Member State: Germany

Common Name: OLG Köln, Urteil v. 21.09.2012 - 6 U 14/12

Decision type: Court decision in appeal

Decision date: 21/09/2012

Court: Higher Regional Court Cologne

Subject:

Plaintiff: Association

Defendant: Citroen Commerce GmbH

Keywords: average consumer, general scope of the UCP Directive, inaccurate information, information obligation, material information, price information, specified price

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 4., \(c\)](#)

Headnote

The trader has to include the obligatory transportation costs in the final price advertised to consumers.

Only mentioning the additional transportation costs in a small printed footnote partially distorts the economic behaviour of consumers and therefore constitutes a misleading commercial practice.

Facts

The defendant, a car retailer, advertised a car including its price in a newspaper advertisement, mentioning the additional transportation costs only in a small printed footnote at the bottom of the page.

The plaintiff filed for cease and desist of such advertisement not mentioning the final price including the applicable transportation costs arguing that the defendant's advertisement constituted an unfair commercial practice since the economic behavior of consumers was materially distorted by the advertisement, Section 5 a, 3 no. 3 UWG.

The defendant is of the opinion that the interpretation of the term "final price" which includes the transportation costs is contrary to article 7, 4 (c) of the UCP Directive. According to this provision "all additional freight, delivery and postal charges" are listed as material information that have to be notified to the consumer. Therefore, it has to be assumed that the European body issuing the UCP Directive does not view such costs, including transportation costs, as part of the final price but as additional charges.

The court of first instance granted the plaintiff's request based on an infringement of the PAngV as well as Sections 5a, 3 no. 3 UWG.

The defendant's appeal was dismissed.

The defendant filed a complaint in order to be granted the possibility for another appeal.

Legal issue

The court ruled in favour of the plaintiff, finding that according to Sections 3, 4 no. 11 UWG in conjunction with Section 1, 1 sentence 1, 6 PAngV, the additional transportation costs have to be included in the final price, irrespective of whether it would have been possible for an average consumer to calculate the final price by an easy addition of the transportation costs which have been separately indicated in the footnote of the respective advertisement.

In the opinion of the court this result is also not contrary to the UCP Directive. The PAngV is not based on the UCP Directive but on the Price Indication Directive 98/6 EC. The Price Indication Directive does not offer any approach for the conclusion that additional costs which are fixed in their amount at the time of conclusion of the contract and which have to be paid in any event, are not part of the final price to be indicated according to article 2 (a), 4, 1 of the Price Indication Directive. Another interpretation can also not be derived from article 7, 4 (c) of the UCP Directive. In case of a conflict, the provisions of the Price Indication Directive supersede the provisions of the UCP Directive (article 3, 4 of the UCP Directive).

Decision

Does the fact that a car trader advertises its products in a newspaper under mentioning of prices, without mentioning the final price in one single amount, including the obligatory transportation costs, constitute a misleading commercial practice?

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The defendant's request was denied. The appeal was dismissed.