

## Case law

### Case Details

**National ID:** 4Ob127/12y

**Member State:** Austria

**Common Name:** link

**Decision type:** Supreme court decision

**Decision date:** 18/09/2012

**Court:** Supreme Court (Vienna)

**Subject:**

**Plaintiff:** Unknown

**Defendant:** Unknown

**Keywords:** discounts, material information, price, product characteristics

### Directive Articles

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

### Headnote

It is a misleading commercial practice to announce in an advertisement that an offer is exclusive for a certain category of consumers, whereas in reality consumers not pertaining to that category can also enjoy an identical offer.

### Facts

The plaintiff and the defendants are owners respectively issuers of two different Austrian newspapers. The first defendant also operates a club, with the membership being EUR 18, and free of charge for the subscribers of the defendants' newspaper.

The defendants have periodically issued "club announcements" in which they have, amongst other things, advertised travel offers. These travel offers were advertised with "special benefits" for club members, which were guaranteed as exclusive.

The travels were arranged by a third party travel agent who cooperated with the defendants, but had also offered the same special benefits to other customers than the defendants' club's members, which impacted on the exclusivity that was guaranteed by the defendants to their customers.

The plaintiff has requested that the defendants cease and desist from advertising false information about the travels in their club announcements.

Both the first instance judge and the court of appeal which ruled on the case, decided that the membership in the club was not a relevant motivation for an average customer to subscribe to the newspaper and they also considered that the defendants had taken sufficient care that the offers in question were exclusive and that they could rely on their contractual partner.

### Legal issue

The Supreme Court assessed the defendants' advertisement in respect to the exclusivity of the offers, as suitable to mislead the customers.

The practice was in this particular case considered as misleading, since the information about exclusivity had been false, without the Court taking into account that the information was correct at the moment of sending the announcements.

The fact that the defendants may have observed due diligence principles was considered by the Court as irrelevant, as it is sufficient that from a consumers' perspective, the latter may have been misled. Furthermore, the Supreme Court assessed that the defendants in the case at hand were not in full compliance with due diligence requirements, as their contract with the travel agent was not sufficient to ensure full exclusivity for the entire period of the offer (as was advertised).

The Supreme Court thereby overruled the decisions of both the first instance judge and the court of appeal.

### Decision

Is it a misleading commercial practice to announce in an advertisement that an offer is exclusive for a certain category of consumers, whereas in reality consumers not pertaining to that category can also enjoy an identical offer?

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result

The Supreme Court ordered the defendants to cease and desist to provide false information about exclusivity of the offers in their club announcements.