

Case law

Case Details

National ID: 2 Ob 247/05w

Member State: Austria

Common Name: 2 Ob 247/05w

Decision type: Supreme court decision

Decision date: 08/03/2007

Court: Supreme Court

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: information obligation, travel

Directive Articles

Package Travel Directive, [Article 3](#) Package Travel Directive, [ANNEX](#)

Headnote

The tour operators' and travel agents' obligation to ensure that the description of a package travel is not misleading and that leaflets have to include articulate and accurate information can only apply to information material, the content and layout of which, the former are able to influence or at least able to verify. This requirement is not fulfilled if printouts from the internet are made in the presence of the customer.

Facts

The plaintiff booked the defendant, a travel agency, a beach vacation with half board for his mother and himself. Because it was a last-minute decision to go on the vacation, the hotel offers at the selected destination (Dubai) were limited. A couple of days after the plaintiff had chosen a hotel situated at the beachfront, he was informed by an employee of the defendant that the selected hotel had no more vacancies. The employee of the defendant recommended an alternative hotel and told the plaintiff that this hotel is not situated at the beach but rather is a city hotel which offers shuttle service to the beach. Together the plaintiff and the employee of the defendant printed out a site map of the hotel which was handed over to the plaintiff. The plaintiff then booked the city hotel.

The distance between the city hotel and the beach is about 25 km; the drive with the shuttle service took about forty-five minutes and therefore was only offered once per day.

After the vacation, the plaintiff filed a claim reclaiming the travel price because the agreed services of a beach vacation were, in his opinion, not fulfilled.

Both the court of first instance and the appellate court rejected the claim.

Legal issue

The Court refers to the provisions of article 3 and the Annex of Directive 90/314. Even though these provisions state that information of a provided leaflet has to be clear, readable and accurate, it does not apply in this case because the plaintiff was not provided with a leaflet for the booked hotel by the defendant. The stated rules only apply to materials of which the content and layout may be influenced or at least verified by tour operators and travel agents, because only then they are able to ensure its correctness.

A printout from the internet made in the presence of the customer does not fulfil these requirements.

Decision

What kind of materials shall be covered by the tour operators' and travel agents' obligation to ensure the clearness and accuracy of information, as well as non-misleading descriptions (article 3 of Directive 90/314)?

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Result

The appeal was dismissed.