

Legal Literature

Legal Literature Details

Member State: Germany

Title: Readjustment of the Unfair Competition Act based on the example of consumer promotion actions

Subtitle:

Type:

URL:

Author: H. KÖHLER

Reference: Gewerblicher Rechtsschutz und Urheberrecht (GRUR) 2010, pages 767-776

Publication Year: 2010

Keywords: black list, general discussion, unfair competition

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 4., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 4., \(b\)](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 5.](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7](#) Unfair Commercial Practices Directive, [Chapter 2, Section 2, Article 8](#) Unfair Commercial Practices Directive, [Chapter 2, Section 2, Article 9](#)

Headnote

The author comes to the conclusion that the UWG (the German Unfair Competition Act) has to be interpreted in compliance with the UCP Directive in such way that commercial practices vis-à-vis consumers undergo a three-step test of unfairness.

(1) In the first step, one has to examine whether the respective behaviour is covered by the "black list" in the sense of the annex to Sec. 3 III UWG.

(2) In a second step, it has to be assessed whether the behaviour constitutes a misleading commercial practice according to § 5 UWG, an omission of information (§ 5a II-IV UWG and § 4 Nr. 4 and 5 UWG) or an inappropriate influence (§ 4 Nr. 1 und 2 UWG).

(3) In a third step, it has to be assessed whether or not the behaviour falls within the scope of the blanket clause of § 3 II 1 UWG.

This examination procedure applies also to sales promotions.

General Note

Related Cases

No results available