



Press and Information

Court of Justice of the European Union

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Judgment in Case C-108/09

Ker-Optika bt v ÁNTSZ Dél-dunántúli Regionális Intézete

EU Member States cannot prohibit the selling of contact lenses via the Internet

Consumer health must be protected by less restrictive measures

Under the Hungarian legislation, the selling of contact lenses requires a specialist shop with a minimum area of 18 m² or premises separated from the workshop. Further, for sales of those products, the services of an optometrist or an ophthalmologist qualified in the field of contact lenses must be used.

The Hungarian firm Ker-Optika sells contact lenses via its Internet site. The Hungarian health authorities prohibited it from pursuing that activity on the ground that, in Hungary, those products could not be sold via the Internet.

Ker-Optika brought a court action challenging that prohibition and the Baranya Megyei Bíróság (the district court of Baranya, Hungary), which heard the case, asks the Court of Justice whether EU law precludes the Hungarian legislation which authorises the selling of contact lenses only in shops which specialise in the sale of medical devices and which, consequently, prohibits the selling of contact lenses via the Internet.

In its judgment, the Court declares that the prohibition, laid down by the Hungarian legislation, on selling contact lenses via the Internet applies to contact lenses from other Member States, which are sold by mail order with delivery to the homes of customers living in Hungary. In that regard, the Court notes that the prohibition deprives traders from other Member States of a particularly effective means of selling those products and thus significantly impedes the access of those traders to the Hungarian market. Consequently, that legislation constitutes an obstacle to the free movement of goods in the European Union.

As regards the justification of that restriction, the Court states that a Member State may impose a requirement that contact lenses are to be supplied by qualified staff capable of providing the customer with information on the correct use and care of those products and on the risks associated with wearing lenses. Thus, by reserving the supply of contact lenses to opticians' shops which offer the services of a qualified optician, the Hungarian legislation is appropriate for securing the attainment of the objective of ensuring protection of consumer health.

The Court observes, however, that those services can also be provided by ophthalmologists in places other than opticians' shops. Moreover, the Court states that those services are, as a general rule, required only on the first occasion when contact lenses are supplied. When lenses are supplied subsequently, it is sufficient that the customer advise the seller of the type of lenses which were provided when lenses were first supplied, and inform the seller of any change in his vision as measured by an ophthalmologist. Further, the additional information and advice required for prolonged use of contact lenses can be given to the customer by using the interactive features on the supplier's Internet site or by a qualified optician designated by the supplier as able to provide that information at a distance.

In those circumstances, the Court rules that the objective of ensuring protection of the health of users of contact lenses can be **achieved by measures which are less restrictive** than those provided for under the Hungarian legislation. Consequently, the prohibition on selling contact

lenses via the Internet is not proportionate to the objective of the protection of public health and must therefore be held to be contrary to the rules relating to the free movement of goods.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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