



Press and Information

Court of Justice of the European Union

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Judgment in Case C-435/11

CHS Tour Services GmbH v Team4 Travel GmbH

**A commercial practice that misleads consumers is unfair and, therefore, prohibited, and there is no need to show that it is contrary to the requirements of professional diligence**

Team4 Travel, a travel agency established in Innsbruck (Austria) and specialising in the sale of snow holidays and skiing lessons in Austria for British schoolchildren, stated in its English-language brochure for the 2012 winter season that various hotels could be booked for certain dates exclusively through its services. In fact, the hotels concerned had, by contract, guaranteed such exclusivity for Team4 Travel.

The hotels concerned did not, however, honour that exclusivity and granted certain quotas for the same dates to CHS Tour Services, a competing travel agency also located in Innsbruck, although Team4 Travel was not aware of that fact at the time its brochures were distributed.

Being of the opinion that the exclusivity statement contained in Team4 Travel's brochures infringed the prohibition of unfair commercial practices, CHS asked the Austrian courts to prohibit Team4 Travel from using the statement. The two lower courts rejected that application, on the ground that, according to them, there was no unfair practice. In the light of the guarantees of exclusivity that it had been given by the hotels, Team4 Travel had complied with the requirements of professional diligence. CHS then brought an appeal on a point of law before the Oberster Gerichtshof (Supreme Court, Austria).

The Supreme Court observed that the information relating to exclusivity, contained in Team4 Travel's brochures, was objectively incorrect. Since it satisfied all of the criteria expressly laid down in that regard by the Unfair Commercial Practices Directive<sup>1</sup>, that information constituted, from the viewpoint of the average consumer, a misleading commercial practice. Nonetheless, in the light of the general scheme of the directive, the national court asked whether, before categorising a practice as misleading, and therefore as unfair and prohibited, it was necessary to determine, in addition to those criteria being satisfied, whether that practice was contrary to the requirements of professional diligence, which would not be the case in this instance, since Team4 Travel had done everything to secure the exclusivity it claimed in its brochures. The Oberster Gerichtshof therefore asked the Court of Justice to interpret that directive.

In today's judgment, the Court in response has stated that, if a commercial practice satisfies all the criteria expressly set out in the provision<sup>2</sup> of the directive which specifically governs misleading practices in relation to the consumer, it is not necessary to determine whether such a practice is also contrary to the requirements of professional diligence as referred to in that directive in order for it legitimately to be regarded as unfair and, therefore, prohibited.

<sup>1</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22). (1)

<sup>2</sup> Article 6(1) of the abovementioned directive.

According to the relevant provision of the directive, the misleading nature of a commercial practice derives solely from the fact that it is untruthful inasmuch as it contains false information or that, generally, it is likely to deceive the average consumer in relation to, inter alia, the nature or main characteristics of a product or a service and that, therefore, it is likely to cause that consumer to take a transactional decision that he would not have taken if there had been no such practice. Thus, the constituent features of a misleading commercial practice are in essence expressed with reference to the consumer as the person to whom unfair commercial practices are applied.

When those features are to be found, the practice must be regarded as misleading and, therefore, unfair and prohibited, and it is not necessary to verify the condition – contained in another provision<sup>3</sup> of the directive setting out the general definition of unfair commercial practices and relating to the sphere of the trader – that the practice is contrary to the requirements of professional diligence.

Thus, the directive ensures, in cases of misleading commercial practices, a high level of consumer protection. Those practices, together with aggressive commercial practices, constitute by far the most common unfair commercial practices.

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**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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<sup>3</sup> Article 5(2)(a) of the abovementioned directive.