



---

**A person who publishes a number of sales advertisements on a website is not automatically a ‘trader’**

*That activity may be regarded as a ‘commercial practice’ if that person is acting for purposes relating to his or her trade, business, craft or profession*

A consumer bought a second-hand watch on an online sales platform. After establishing that the watch did not correspond to the description given in the sales advertisement, the consumer informed the seller that he wished to withdraw from the contract. The seller, Ms Evelina Kamenova, refused to take back the item in exchange for a refund. Consequently, the consumer lodged a complaint with the Bulgarian Consumer Protection Commission (CPC).

Having checked the platform, the CPC established that, on 10 December 2014, eight sales advertisements for various goods were still being published on that site by Ms Kamenova operating under the profile ‘eveto-ZZ’.

By decision of 27 February 2015, the CPC found that Ms Kamenova had committed an administrative offence and imposed several administrative fines on the basis of national legislation on consumer protection. According to the CPC, Ms Kamenova had failed to indicate, in each of those advertisements, the trader’s name, postal address and email address, the total price of the product put up for sale, inclusive of taxes and fees, the payment conditions, the conditions of delivery and performance, the consumer’s right to withdraw from the distance contract, the conditions, period and procedures for exercising that right as well as a reminder that there was a statutory guarantee of conformity of the goods sold.

Ms Kamenova brought an action against that decision before the Bulgarian courts on the ground that she was not a ‘trader’ and that, accordingly, the provisions of Bulgarian law were not applicable. It is in that context that the Administrativen sad — Varna (Administrative Court, Varna, Bulgaria) asks the Court of Justice whether a natural person who publishes online a relatively high number of sales advertisements for goods of significant value can be regarded as a ‘trader’ within the meaning of the Unfair Commercial Practices Directive.<sup>1</sup>

In today’s judgment, the Court states first that, in order to be classified as a ‘trader’, within the meaning of the directive, it is necessary that the person concerned should be acting ‘for purposes relating to his trade, business, craft or profession’ or in the name of or on behalf of a trader.

The Court goes on to clarify that the meaning and scope of the concept of ‘trader’ must be determined in relation to the concept of ‘consumer’, which refers to any individual not engaged in commercial or trade activities.

The Court finds, on this point, that it is for the national court to determine, in each case, on the basis of all the facts in its possession, whether a natural person, such as Ms Kamenova, was acting for purposes relating to his or her trade, business, craft or profession by verifying, in

---

<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).

particular, whether the sale was carried out in an organised manner, whether it was a regular occurrence or was for profit, whether the offer was concentrated on a small number of goods, and to consider the legal status and technical experience of the seller.

Moreover, in order for the activity in question to be regarded as a 'commercial practice', the national court must establish that that activity originates from a 'trader', and, secondly, that it constitutes an act, omission, course of conduct or commercial communication 'directly connected with the promotion, sale or supply of a product to consumers'.

In those circumstances, the Court concludes that **a natural person who simultaneously publishes on a website a number of advertisements offering new and second-hand goods for sale must be classified as a 'trader', and such an activity can constitute a 'commercial practice', only if that person is acting for purposes relating to his or her trade, business, craft or profession.**

---

**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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

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

Press contact: ... ☎ (+352) 4303 3355

Pictures of the delivery of the Judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106