



Occupational duty of care not decisive when judging misleading business practice - Competition law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Dusseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London www.grprainer.com/en conclude: The Court of Justice of the European Union (ECJ) ruled (Az.: C-435/11) that the occupational duty of care is not decisive when judging whether consumers have been misled and the concomitant prohibition. The decision was based on a case in which a tourist office advertised with an exclusive possibility of booking hotels. While there was an exclusivity agreement between the business and the hotels, the hotels did not adhere to this and also permitted competing travel offices to carry out bookings with them.

One of the competitors took the view that the advertising with exclusivity constituted a breach of the prohibition on unfair business practices and filed for a ban. The national court accepted the objectively false claim in the brochures and also considered that this satisfied all of the criteria for the directive on unfair business practices. In the view of the judges, however, the existence of an exclusivity agreement argued in favour of observing the occupational duty of care. The court appealed to the ECJ with a petition, wanting to know whether an examination as to the observance of the requirements of the occupational duty of care needed be carried out for the categorization of a business measure as misleading.

In their judgment, the judges concluded that for cases in which all of the requirements of the directive on unfair practices are fulfilled, it is not necessary to have a more extensive examination with respect to the occupational duty of care. Whether it is misleading is determined solely by the untruthfulness of the claim. Thus, a business practice is untruthful if it incorporates false information or by the manner in which the average consumer could be deceived. Consumer protection is the core purpose of the directive, which is why misleading business practices must be examined from its perspective. Consequently, the advertising in the travel office's brochures breached the directive in the instant case.

In addition to injunctions, an anti-competitive infringement can give rise to claims for damages. With the help of a lawyer versed in competition law, aggrieved parties can take action against competitors in the event of an infringement or defend themselves against these kinds of accusations. Immediate action is always necessary in order to prevent deadlines from lapsing unnoticed.

<http://www.grprainer.com/en/Unfair-Competition.html>

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Anlage: Bild



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