



Reports of Cases

Case C-391/12

**RLvS Verlagsgesellschaft mbH
v
Stuttgarter Wochenblatt GmbH**

(Request for a preliminary ruling from the Bundesgerichtshof)

(Directive 2005/29/EC — Unfair commercial practices — Scope *ratione personae* — Misleading omissions in advertorials — Legislation of a Member State prohibiting any publication for remuneration not identified by the term ‘advertisement’ (‘Anzeige’) — Complete harmonisation — Stricter measures — Freedom of the press)

Summary — Judgment of the Court (Third Chamber), 17 October 2013

Approximation of laws — Unfair business-to-consumer commercial practices — Directive 2005/29 — Scope — Newspaper publishers — Publications which are liable to promote the products and services of a third party not liable to alter significantly the economic behaviour of the consumer — Not included — National rules prohibiting any publication for remuneration without the term ‘advertising’ — Lawfulness

(European Parliament and Council Directive 2005/29, Art. 2(d))

Where publications which are liable to promote the products and services of a third party are not liable to alter significantly the economic behaviour of the consumer, Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market and amending Directives 84/450, 97/7, 98/27 and 2002/65 may not be relied on as against newspaper publishers, with the result that, in those circumstances, that directive must be interpreted as not precluding the application of a national provision under which those publishers are required to identify specifically, in this case through the use of the term ‘advertisement’, any publication in their periodicals for which they receive remuneration, unless it is already evident from the arrangement and layout of the publication that it is an advertisement.

When a national provision does pursue consumer protection objectives, in order to ascertain whether such a provision comes within the scope of Directive 2005/29 it is also necessary that the conduct covered by that national provision is a commercial practice within the meaning of Article 2(d) of that directive. This is so where the practices in question form part of an operator’s commercial strategy and are directly connected with the promotion and sale of its products or services, in which case they do indeed constitute commercial practices within the meaning of Article 2(d) of that directive and, consequently, fall within its scope.

Although Directive 2005/29 gives a particularly broad definition of ‘commercial practices’, the fact remains that the practices covered by it must be commercial in nature, that is to say, they must originate from traders, and they must be directly connected with the promotion, sale or supply of their products to consumers.

Since the fact that the newspaper publisher proceeds with such publications which are liable to promote — possibly indirectly — the products and services of a third party is not liable to alter significantly the economic behaviour of the consumer in his decision to purchase or take possession of the newspaper in question, such a publishing practice is not in itself liable to be classified as a ‘commercial practice’ on the part of that publisher.

Although the possibility cannot be ruled out that a newspaper publisher may itself employ, in its products or in other media, a commercial practice which may be classified as unfair in relation to the consumer concerned, in this case the reader, for example, by offering the chance of winning a prize in games, puzzles or competitions, thereby encouraging the consumer to purchase the product concerned, namely a newspaper, it must be remembered that point 11 of Annex I to Directive 2005/29 is not intended as such to require newspaper publishers to prevent possible unfair commercial practices by advertisers for which a direct connection could thereby be potentially established with the promotion, sale or supply to consumers of the products or services of those advertisers.

(see paras 35-37, 41, 44, 50, operative part)