



Reports of Cases

Case C-310/15

Vincent Deroo-Blanquart

v

Sony Europe Limited

(Request for a preliminary ruling from the Cour de cassation (France))

(Reference for a preliminary ruling — Consumer protection — Unfair commercial practices — Directive 2005/29/EC — Articles 5 and 7 — Combined offer — Sale of a computer equipped with pre-installed software — Material information relating to the price — Misleading omission — Consumer unable to obtain the same model of computer not equipped with software))

Summary — Judgment of the Court (Eighth Chamber), 7 September 2016

1. *Consumer protection — Unfair business-to-consumer commercial practices — Directive 2005/29 — Unfair commercial practice — Concept — Commercial practice consisting of the sale of a computer equipped with pre-installed software without any option for the consumer to purchase the same model of computer not equipped with pre-installed software — Not included — Conditions — Assessment by the national court*

(European Parliament and Council Directive 2005/29, Art. 2(e) and (h) and 5(2))

2. *Consumer protection — Unfair business-to-consumer commercial practices — Directive 2005/29 — Misleading commercial practice — Concept — Combined offer consisting of the sale of a computer equipped with pre-installed software — Failure to indicate the price of each of those items of pre-installed software — Not included*

(European Parliament and Council Directive 2005/29, Arts 5(4)(a) and 7)

1. A commercial practice consisting of the sale of a computer equipped with pre-installed software without any option for the consumer to purchase the same model of computer not equipped with pre-installed software does not in itself constitute an unfair commercial practice within the meaning of Article 5(2) of Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market and amending Directive 84/450, Directives 97/7, 98/27 and 2002/65 and Regulation No 2006/2004, unless such a practice is contrary to the requirements of professional diligence and materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product, a matter which is for the national court to determine by taking account of the specific circumstances of the case.

In that regard, in the context of the overall assessment of the respect for the requirements of professional diligence, it is for the national court to take into account circumstances such as whether the consumer was correctly informed, whether the combined offer met the expectations of a significant proportion of consumers and whether it was possible for the consumer to accept all the elements of that offer or to cancel the sale. Those circumstances are likely to satisfy the requirements

of honest market practices or of the principle of good faith in the field of the manufacturing of computer equipment for the general public, the trader thereby demonstrating care towards the consumer.

Furthermore, it is for the referring court to determine whether, during such a sale of a computer equipped with pre-installed software without any option for the consumer to purchase the same model of computer not equipped with pre-installed software, the ability of that consumer to make an informed transactional decision was appreciably impaired, when a consumer has been duly informed, prior to the purchase, that the model of computer that is the subject matter of the sale was not marketed without pre-installed software and that he was therefore, in principle, free to choose another model of computer, or another brand, with similar technical specifications, sold without software or used with different software.

(see paras 37, 41, 42, operative part 1)

2. In the context of a combined offer consisting of the sale of a computer equipped with pre-installed software, the failure to indicate the price of each of those items of pre-installed software does not constitute a misleading commercial practice within the meaning of Article 5(4)(a) and Article 7 of Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market and amending Directive 84/450, Directives 97/7, 98/27 and 2002/65 and Regulation No 2006/2004.

With regard to the context of a combined offer consisting of the sale of a computer equipped with pre-installed software — namely where the computer that was the subject matter of the sale was, in any case, only offered for sale equipped with the pre-installed software — and with regard to the fact that such a commercial practice does not constitute, in itself, an unfair commercial practice within the meaning of Article 5(2) of Directive 2005/29, the failure to indicate the price of each of those items of software is not such as to prevent the consumer from taking an informed transactional decision or likely to cause the average consumer to make a transactional decision that he would not have taken otherwise. Therefore, given that price of each of those items of software does not constitute material information within the meaning of Article 7(4) of Directive 2005/29, the failure to indicate the price of each of those items of software does not constitute a misleading commercial practice within the meaning of Article 5(4)(a) and Article 7 of that directive.

(see paras 50-52, operative part 2)