



Reports of Cases

Case C-206/11

Georg Köck

v

Schutzverband gegen unlauteren Wettbewerb

(Request for a preliminary ruling from the Oberster Gerichtshof)

(Consumer protection — Unfair business-to-consumer commercial practices in the internal market — Legislation of a Member State providing for prior authorisation of announcements of sales)

Summary — Judgment of the Court (First Chamber), 17 January 2013

1. *Approximation of laws — Unfair business-to-consumer commercial practices — Directive 2005/29 — Scope — National legislation providing for prior authorisation of announcements of sales — Legislation pursuing consumer protection objectives — Included*

(European Parliament and Council Directive 2005/29, recital 8, Arts 1 and 2(d))

2. *Approximation of laws — Unfair business-to-consumer commercial practices — Directive 2005/29 — National legislation prohibiting a commercial practice on the sole ground of lack of prior authorisation with no examination of its possible unfairness — Not permissible*

(European Parliament and Council Directive 2005/29)

1. See the text of the decision.

(see paras 25-33)

2. Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market must be interpreted as precluding a national court from ordering the cessation of a commercial practice not covered by Annex I to that directive on the sole ground that the practice has not been the subject of prior authorisation by the competent administrative authority, without itself carrying out an assessment of the unfairness of the practice in question against the criteria set out in Articles 5 to 9 of that directive.

National legislation which provides for the anticipatory or preventive review of unfair commercial practices may indeed be reconciled with the system established by Directive 2005/29, but that legislation cannot prohibit such a commercial practice on the sole ground that prior authorisation has not been granted by the competent authority. First, such legislation would exclude a review of such commercial practices and, secondly, by providing for review subsequent to the prohibition laid down for failure to comply with the prior authorisation requirement, the legislation would deprive the practice, because of its nature and in particular because of the time factor involved, of economic sense

for the trader. Such national legislation would thus amount to enacting a general prohibition of the commercial practices made use of in a particular system even though the possible unfairness of those practices has not even been assessed against the criteria set out in Articles 5 to 9 of the directive.

(see paras 45-50, operative part)