European Union

“Deroo-Blanquart”

Decision of the European Court of Justice (Eighth Chamber) 7 September 2016 – Case No. C-310/15

Vincent Deroo-Blanquart v. Sony Europe Limited

Directive 2005/29/EC, Arts. 5(2), 5(4)(a) and 7

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Keywords Pre-installed software · Unfair commercial practice · Professional diligence · Average consumer · Price indication · Misleading commercial practice

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/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 (‘Unfair Commercial Practices Directive’), 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 the main proceedings.
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.