

Misleading Commercial Practices, Sec. 5 UCA

1. EU Law

B2B: Art. 2 (b), 5 (1) MCA-D 2006/114/EC

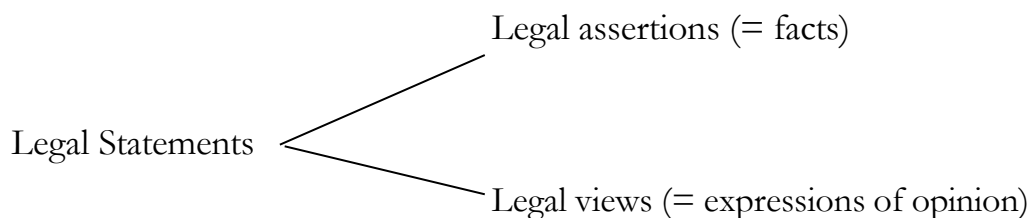
B2C: Art. 5 (1), (4) (a), (b) and Annex I No. 1-23c UCP-D

2. Statement, Sec. 5 (2) UCA

= Statement of fact

No matter in which form of expression Reorientation BGH:
Also opinions as "information" within the meaning of Art. 6
(1) UCP-D (BGH GRUR 2019, 754 para.. 25 -
Prämiensparverträge), in particular on the legal situation.

Other opinion: *Sosnitz*, GRUR 2022, 137 et seq:



3. Misleading

= Discrepancy between reality and the perception of the addressed public

a) Scale

Averagely informed, reasonable, situation-adequately attentive consumer

- b) Misleading rate
Earlier: 10-15 %
Today: 25-30 %

c) Determination

Risk *of* misleading is sufficient

Finding of facts or normative misleading concept?

Form of determination:

- the judges own expertise
- demoscopic surveys (traffic survey)
- information (e.g. chambers, associations)

d) Principles

- *Ambiguous statements* are misleading even if one variant of the meaning does not apply.
- *Eye-catching advertising*: Particularly highlighted information must be considered in isolation (exception: asterisk advertising).
- *Advertising with self-evident facts*: Can be misleading if particularly emphasized
- *Advertising of unique selling proposition*: Only permissible if there is a considerable and lasting lead

4. Relevance

Independent of Sec. 3 (2) UCA

Usually exists, but may be absent, for example, if the circumstance is only of minor importance for the purchase decision.

The lower the misleading rate, the more carefully relevance must be checked.

5. Weighing of interests

In special cases, a relevant risk of deception may be acceptable
=> Weighing of interests!

6. Special cases

- a) Advertising with price reductions, Sec. 5 (4) UCA
- b) Decoy or lure advertising (“Lockvogelangebote”), Annex to Sec. 3 (3), No. 5 UCA
- c) Dual quality, Sec. 5 (3) No. 2 UCA

