

Misleading by Omission, Sec. 5a, 5b UCA

1. EU Law

Art. 7 UCP-D

2. No general obligation to provide clarification or information

Required is *duty of disclosure* from

- law
- contract
- preceding action
- special importance for purchase decision
("material", Sec. 5b UCA)

3. Material information, Sec. 5b UCA

Typical cases:

- conditions of sales promotions
- conditions of participation in contests and sweepstakes
- discontinued models
- test results

4. Specific material information according to Sec. 5b (1) UCA

Basis: Art. 7 (4), (5) UCP-D

"Offer" = When the consumer can make a declaration of acceptance aimed at purchase based on the information provided (price, characteristics of goods or services).

=> Also *before* invitatio ad offerendum (cf. Sec. 1 (1) (1) Act on Price Indication)

5. Information requirements under EU law, Sec. 5b (4) UCA, Annex II UCP-D

6. Non-identifiable commercial purpose (covered advertising, "Schleichwerbung"), Sec. 5a (4) UCA

For example:

- advertising in editorial articles
(newspaper, magazine)
- camouflage of ads
- paid "bloggers" on the Internet
- product placement
 - permitted in television broadcasts within narrow limits, Art. 11 (3) Directive 2010/13/EU
 - Inadmissible in the cinema without informative notice (BGH GRUR 1995, 744 - *Feuer, Eis & Dynamit*)

