

ECJ: Judgment on Art. 15 Brussels I (“Ilsinger”)

On 14 May 2009, the ECJ delivered its judgment in case C-180/06 (*Renate Ilsinger v. Martin Dreschers*).

The case basically concerns the question whether legal proceedings by which a consumer seeks an order requiring a mail-order company to award a prize apparently won by him – without the award of that prize depending on an order of goods – are contractual in terms of Art. 15 (1) (c) Brussels I Regulation, if necessary, on condition that the consumer has none the less placed an order.

The Oberlandesgericht Wien (Austria) referred the following questions to the ECJ for a preliminary ruling:

Does the provision in Paragraph 5j of the ... KSchG ..., which entitles certain consumers to claim from undertakings in the courts prizes ostensibly won by them where the undertakings send (or have sent) them prize notifications or other similar communications worded so as to give the impression that they have won a particular prize, constitute, in circumstances where the claiming of that prize was not made conditional upon actually ordering goods or placing a trial order and where no goods were actually ordered but the recipient of the communication is nevertheless seeking to claim the prize, for the purposes of ... Regulation ... No 44/2001: a contractual, or equivalent, claim under Article 15(1)(c) of Regulation No 44/2001?

If the answer to question 1 is in the negative:

Does a claim falling under Article 15(1)(c) of Regulation No 44/2001 arise if the claim for payment of the prize was not made conditional upon ordering goods but the recipient of the communication has actually placed an order for goods?'

The Court held as follows:

In a situation such as that at issue in the main proceedings, in which a consumer seeks, in accordance with the legislation of the Member State in which he is domiciled and before the court for the place in which he resides, an

order requiring a mail-order company established in another Member State to pay a prize which that consumer has apparently won, and

- where that company, with the aim of encouraging that consumer to conclude a contract, sent a letter addressed to him personally of such a kind as to give him the impression that he would be awarded a prize if he requested payment by returning the 'prize claim certificate' attached to that letter,

- but without the award of that prize depending on an order for goods offered for sale by that company or on a trial order, the rules on jurisdiction laid down by Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as follows:

- such legal proceedings brought by the consumer are covered by Article 15(1)(c) of that regulation, on condition that the professional vendor has undertaken in law to pay that prize to the consumer;

- where that condition has not been fulfilled, such proceedings are covered by Article 15(1)(c) of Regulation No 44/2001 only if the consumer has in fact placed an order with that professional vendor.

See with regard to this case also our previous post on the AG opinion which can be found here.