Case Summary

Equal Employment Opportunity Commission, Petitioner v. Abercrombie & Fitch Stores, Inc. (On writ of certiorari to the United States Court of Appeals for the Tenth Circuit)

1. Reference details

Jurisdiction: Supreme Court of the United States

Date of decision: 1 June 2015

Link to the full case: http://www.supremecourt.gov/opinions/14pdf/14-86_p86b.pdf

2. Facts of the case

Samantha Elauf, a practicing Muslim, wears a headscarf following her religious belief. She applied for a job at a clothing store, Abercrombie and Fitch, and was invited for an interview. During the interview neither Elauf nor the interviewer mentioned the headscarf, and Elauf was rated well for her skills. However, Elauf was not offered the position, as her headscarf was deemed incompatible with the company's "Look Policy", which prohibited wearing "caps" at work. The policy was interpreted to prohibit all headwear worn by staff, religious or non-religious.

The Equal Employment Opportunity Commission (EEOC) filed a suit against Abercrombie and Fitch Stores (Abercrombie) on behalf of Elauf, alleging that Abercrombie's refusal to hire her was discrimination on the basis of her religious practice, which breached Title VII of the Civil Rights Act 1964.

The first instance, Oklahoma District Court, ruled in favour of the EEOC, but the Court of Appeals for the Tenth Circuit later reversed the decision by granting summary judgment to Abercrombie. The Tenth Circuit held that an employer cannot be liable for failing to accommodate a religious practice when the applicant has not provided actual information on his or her need for accommodation.

The law clearly states that an employer cannot refuse to hire an applicant in order to avoid accommodating a religious practice that does not impose undue hardship. The disputed question before the Supreme Court however was: does the employer need to be informed of such need for accommodation in order for the prohibition to apply?

3. Law

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U. S. C. §2000e– 2(a) and §2000e(j)

It is unlawful for an employer:

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;
Or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or

otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. §2000e–2(a).

Please note: the first is often referred to as the "disparate treatment" (or "intentional discrimination" provision and the second, the "disparate impact" provision.

4. Legal arguments

The EEOC argued that Elauf was intentionally discriminated on the basis of her religious practice (a disparate-treatment claim) when she was not hired because she uses a headscarf.

Abercrombie's primary argument was that an applicant cannot show disparate treatment without first showing that an employer has actual knowledge of the applicant's need for accommodation.

Further, Abercrombie argued that a claim based on a failure to accommodate an applicant's religious practice should have been raised as a disparate-impact claim, not a disparate-treatment claim. According to Abercrombie, a neutral policy could not constitute "intentional discrimination", and therefore the focus should have been not on a discriminatory intent, but on the possible discriminatory impact of the policy.

5. Decision

The Court ruled, with a majority of eight to one,[1] that the Tenth Circuit had misinterpreted the Civil Rights Act's requirements in granting the summary judgment. It reversed the previous judgment and remanded the case for further consideration consistent with the Supreme Court's opinion.

Justice Scalia, who delivered the majority opinion, rejected the "knowledge requirement" suggested by Abercrombie. The term "because of" in Title VII, is usually used to import a but-for causation standard. However, in the case of Title VII this standard is relaxed and the applicant needs only to show that his or her need for accommodation was a motivating factor in the employer's decision.

The Court noted that while some anti-discrimination statutes do impose a requirement of actual knowledge (e.g. the Americans with Disabilities Act 1990), Abercrombie was wrong to argue this was a prerequisite with regard to religious practice. The Court stated that the prohibition of intentional discrimination in Title VII outlaws certain *motives*, regardless of the level of the employer's knowledge. It was therefore confirmed that an employer may not make an applicant's need for accommodation for their religious practice, whether the need is actual or only suspected, a factor in the employer's recruitment decisions. While a request for accommodation may make it easier to infer motive, it is not a necessary condition of liability.

The Court stated that to find in favour of Abercrombie on this point would require it to read words into Title VII to produce what Abercrombie considers to be the desirable result. This was a matter for Congress, not the Court.

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[1] Justice Alito filed an opinion concurring in the judgment. Justice Thomas filed an opinion concurring in part and dissenting in part.

Further, the Court rejected Abercrombie's view that the issue should have been addressed as a disparate-impact claim, not as a disparate-treatment claim. The Court noted that Congress has not limited the meaning of "religion" as a protected ground under Title VII to religious belief. Instead the term includes one's religious practice, and so religious practice is one of the protected characteristics that cannot be accorded disparate-treatment and must be accommodated. While an employer is entitled to have a general no-headwear policy, the policy will need to be adapted to an applicant's need for an accommodation.

Concurring judgment

Justice Alito concurred with the majority decision although disagreed with their finding in respect of the "knowledge" requirement. Justice Alito took the view that knowledge of the need for a reasonable adjustment is necessary for Title VII to apply.

Dissent

Justice Thomas held, in line with Abercrombie's argumentation, that the case should not have succeeded as a disparate-treatment claim, but as a disparate-impact claim, as in his view the mere application of a neutral policy could not constitute intentional discrimination.