

**Oikeuskäytäntö****Tapauksetiedot**

**Kansallinen tunniste:** The Market Court, Judgement 159/19

**Jäsenvaltio:** Suomi

**Lyhytnimi:** N/A

**Päätöksen tyyppi:** Tuomioistuimen päätös, 1. oikeusaste

**Päätöksen päivämäärä:** 05/04/2019

**Tuomioistuin:** Markkinaoikeus

**Aihe:**

**Kantaja:**

**Vastaaja:**

**Avainsanat:** confusing marketing, discounts, false information, misleading advertising, price information, unfair commercial practices

**Direktiivin artiklat**

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6](#) Injunctions Directive, [link](#)

**Ylähuomautus**

The Consumer Ombudsman demanded, under the threat of a fine of EUR 100,000, that the Market Court prohibit SGN Sportia Oy (the defendant) from using a practice in consumer marketing in which:

the price of the products is expressed as reduced using as the reference for calculation of the discount a price which has not actually been charged to consumers at the same establishment during the previous two months.

the sales prices of the products advertised by the defendant are compared with the so-called recommended retail price quoted by the importer or supplier if it does not generally correspond to the price charged by other retailers for the same product.

the prices of the products advertised by the defendant are compared with the prices of similar products offered by competing traders if the comparison is not based on a sufficient determination of the price level of competitors' products.

The Market Court approved the Consumer Ombudsman's application but reduced the amount of the demanded default fine to EUR 40,000.

**Taustatiedot**

The defendant had marketed cross-country ski boots on its website from mid-August 2016 to early April 2017 with the crossed-out reference price of EUR 199, and from 1 February 2017 to 3 April 2017 with the crossed-out reference price of EUR 180, announced in direct connection with the selling price of EUR 159. The defendant had also marketed men's running shoes on its website, the sale price of which on 18 August 2016 was EUR 129, on 22 December 2016 EUR 119.96, and on 1 February 2017 EUR 129. The reference price of the product announced in the immediate connection with the sales price on the abovementioned dates was EUR 149.95. In addition, the percentages of discounts and other terms referring to discounts had been used in connection with the sales prices and reference prices of the products.

According to the Consumer Ombudsman, the defendant had not proved that it had ever charged consumers a price corresponding to the reference price for the products in question. In any event, the prices had been compared to some significantly higher prices charged in the past, which had lost their relevance as reference prices over time. Nor had the defendant shown that the reference prices used corresponded to the recommended retail prices used on the market or to those charged by competitors. According to the Consumer Ombudsman, the procedure had been misleading to consumers and, where it may have affected the average consumer's transactional decision, the procedure had infringed Chapter 2, Sections 11, 6 and 3 of the Consumer Protection Act and thus Chapter 2, Section 1 of the Consumer Protection Act. According to the defendant, it had acted in an acceptable manner generally used in the industry and had not sought to mislead anyone or to misrepresent its products or their prices.

**Oikeudellinen kysymys**

The Market Court considered whether the use of reference prices that had never actually been charged as well as the use of recommended retail prices, that do not generally correspond to the price charged by other retailers for the same product, was misleading to consumers.

**Ratkaisu**

The Market Court held that the defendant did not show that it had previously charged the reference price or that the reference price had been based on a recommended retail price quoted by the importer or the supplier which corresponded with the price other retailers generally charge or on the price competitors charged for the corresponding product. Therefore, there was no real price advantage; the sales prices had simply indicated the level at which the defendant had normally sold its products on the website. In addition, the Market Court held that the misleading information as regards the price advantage provided by the defendant in its marketing was likely to have led the consumer to make a purchase decision which they would not have made without the information provided. The defendant's conduct had therefore been misleading within the meaning of Chapter 2, Section 6 of the Consumer Protection Act and thus prohibited as unsuitable under Section 1 of that Chapter. The Market Court prohibited the defendant from continuing or renewing the misleading actions under penalty of a fine of EUR 40,000.

URL: <https://www.markkinaoikeus.fi/fi/index/paatokset/markkinaoikeudellisetasiat/markkinaoikeudellisetasiat/1555061412978.html>

Koko teksti: [Koko teksti](#)

**Asiaan liittyvät tapaukset**

Ei tuloksia saatavilla

**Oikeuskirjallisuus**

Ei tuloksia saatavilla

**Hakutulos**

The Market Court held that it was not proven that the reference price had been charged or that the recommended retail price corresponded to the price generally charged by other retailers for the same product. Therefore, there was no real price advantage and the marketing was misleading from consumers' point of view and in breach of the Consumer Protection Act. The Market Court prohibited the defendant from continuing or renewing the misleading actions under penalty of a fine of EUR 40,000.