

Съдебна практика**Данни за случая**

Национален идентификатор: Administrative Court Plovdiv, Judgement 1151/2020

Държава-членка: България

Общоприето наименование: N/A

Вид решение: Административно решение на първа инстанция

Дата на решението: 03/07/2020

Съд: Административен съд Пловдив

Заглавие:

Ищец:

Ответник:

Ключови думи: information requirements, right of withdrawal

Членове от директивата

Consumer Rights Directive, [Chapter 3, Article 6](#)

Уводна бележка

The trader provides consumers with information on their right to return purchased goods under a contract concluded outside the commercial site, including through the procedure described in the contract itself, so the clauses must be clear, understandable, not misleading, and must not obscure essential information.

Факти

The Consumer Protection Commission has banned unfair misleading commercial practice, which is that when formulating the clauses in the contract regarding consumers' right to withdraw from the contract, the trader conceals essential information, which influences consumer behaviour.

The contract contains the following clauses:

Item 7 - The buyer has the right to unpack and inspect the goods for defects before their acceptance ... By signing a handover protocol, it is considered that the goods are accepted without remarks ...

Item 8. The buyer has the right to withdraw from the contract ... within 14 days from the date of acceptance of the goods ...

Item 9. 1. For woollen products, the goods shall be delivered sealed for reasons related to health hygiene. When printing the package, the buyer loses his right of withdrawal ... Unpacking means any violation of the integrity of the control seal of the package.

Item 9. 2. For electric household appliances, utensils and cooking utensils, the goods are delivered sealed and completed ... In case of withdrawal from the contract ... the buyer must return the goods fully packaged and equipped with all accessories within 14 days of declaring the refusal. Proper packaging ... means its delivery in original packaging with intact integrity, with all accessories in good condition ...

Item 9. 3. In case the buyer does not fulfil his obligation under Art. 57, item 5 and under Art. 55, para. 1, item 1 of the Consumer Protection Act, the parties accept that the right of refusal has not been duly exercised and the seller has the right to refuse to receive the goods.

Item 9. 4. The parties agree that in case of valid withdrawal from the contract if the goods are unpacked or used, the buyer owes the seller a penalty for the necessary costs of cleaning, disinfection, diagnostics from a licensed service, re-equipment and accessories of the returned good, etc. in the amount of 50% of the agreed price.

The CPC accepts that the clauses provide divergent and contradictory information about the existence of a right of withdrawal and the manner of exercising it. The CPC accepts that in practice there is only one possible hypothesis in which the consumer can withdraw from the contract without penalty, and this is the case where the goods are returned unpacked. In all other cases, the consumer does not have the rights granted to him by law. However, it would be difficult for the average consumer to reach this conclusion by reading the vague and incomprehensible information provided by the trader.

Правен въпрос

How should the trader provide information on the consumer's right to withdraw from the off-premises contract, including in the contract itself?

Решение

The Administrative Court considers that in the stated factual situation the CPC has correctly accepted that the information provided in the contract regarding the existence of a right of withdrawal and the ways of exercising are unclear, ambiguous and incomprehensible to the average consumer. The concealment of essential information and its provision in a vague manner constitutes a violation of the law and the CPC has correctly issued an order for its termination.

Пълен текст: [Пълен текст](#)

Свързани случаи

Няма налични резултати

Правна литература

Няма налични резултати

Резултат

Plovdiv Administrative Court confirms the order of the Chairman of the Consumer Protection Commission. The decision is subject to appeal before the Supreme Administrative Court.