

Case law

Case Details

National ID: 2. Kf.27.216/2003/6.

Member State: Hungary

Common Name: Siesta Key Kereskedelmi Bt. gg. Wirtschaftswettbewerbsamt (GVH)

Decision type: Other

Decision date: 24/03/2004

Court: Fővárosi Ítéltábla (Appellate court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Distance Selling Directive, [Article 4, 1](#). Distance Selling Directive, [Article 4, 2](#).

Headnote

The court ruled on the question of consumers being misled in distance selling contracts through the provision of false information.

Facts

The company Siesta Key Bt produced Kombucha Gold teas. These beverages were sold via television, internet sites, mail order catalogues etc. In its advertising, the company described the beverages as an effective remedy for illnesses. The product brochure went on to describe the curative properties of the tea in greater detail, stating that it could help to treat and prevent diseases as well as strengthening the immune system.

On 1st February 2001, the company signed a collaboration agreement with Studio Moderna 2000 TV Shop Hungary Kft. Under the contract, the latter took on responsibility for distributing the tea products. Siesta Key Bt stated that it would cover all liabilities.

The Hungarian Competition Agency (GVH) initiated proceedings against Siesta Key Bt. and investigated the limited partnership to determine whether it had infringed the rules under competition law on exerting an unfair influence on consumers' decisions. In order to test the actual medical effects of the Kombucha Gold products, the GVH commissioned three research institutes (GYKI, OGYI, and OETI). The laboratory tests carried out by GYKI showed that there was no evidence that the Kombucha products had any curative properties. In fact, they were to be categorised as foodstuffs. Even if the products did have curative properties, the producer would require a special licence to sell them on the market. Since the biological tests did not prove the existence of any such curative properties, the company's advertising was misleading. Moreover, the advertising was ambiguous and therefore difficult to understand for the layman. The OGYI pointed out that Kombucha tea contains uncaria extract, a powder extract from the uncaria tomentosa plant. As this extract cannot be classified as a foodstuff, but rather is a "product with curative properties", it may not be sold on the market as a foodstuff.

The Institute for Nutritional Science (OETI) emphasised that Kombucha tea had been well-known for a long time in popular medicine, but that its effects were even more hotly disputed as a result. The institute argued that it was advisable to consult a doctor before using the product.

In its decision (Vj.-199/2001/38), the GVH ruled that, on the basis of the aforementioned evidence, the limited partnership had, through the information it had provided and its advertising, acted in such a way as to (potentially) exert an unfair influence on consumers' decisions. In the GVH's view, the company was also not licensed to produce tea containing uncaria extract.

The GVH fined the company and forced it to inform consumers about the ruling in a national daily newspaper.

Legal issue

The limited company subsequently filed a lawsuit with the Court of First Instance. After the case was dismissed, the company took the case to the Court of Appeal. Both courts upheld the GVH's rulings and stressed that the advertisements and the dissemination of inaccurate information affected an area that is afforded special protection in law, namely human health. Moreover, the advertisements and information had reached a very large group of consumers. The company's entire commercial operations were focused on selling similar products. In light of this, the courts considered the fine and the other penalties imposed to be appropriate. The Court of First Instance emphasised that it was not necessary for any health damage to have been suffered for there to be an offence of unfair influencing of consumers under § 8 paras 1 and 2a of the aforementioned Act. Rather, it is enough if the activity has the potential to exert an unfair influence on a consumer's decision.

Decision

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result