

Case Details

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National ID	Legf. Bír. Kfv. X. 39.924/2002. sz.
Member State	Hungary
Common Name	Amt für Wirtschaftswettbewerb gg. Versandunternehmen
Decision type	Other
Decision date	01/01/9999
Court	Magyar Köztársaság Legfelsőbb Bíróság (Supreme court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

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

Headnote

If a supplier sells, via mail order recipe cards or any other cards that form part of an extensive collection and sends them individually and unsystematically, then the consumer must be informed in promotional material about the total costs of buying the collection.

Facts

The defendant sold, via mail order, three series of recipe cards and other cards that formed part of an extensive collection. These cards were delivered in regular batches to subscribers. The defendant promoted the recipe cards and other cards with leaflets and by placing inserts in different magazines. In its initial promotional material, the defendant offered a number of cards, card storage boxes with dividers and complimentary gifts. The contract relating to the entire collection came into effect when the consumer returned the forms sent out with the initial letter. Following the first order (and without the need for further orders to be placed), the defendant regularly sent packets containing half the number of cards that had been sent initially. These were sent unsystematically and were not arranged thematically. Consumers were not informed in the promotional material about the number of packets required to complete the collection. According to the defendant, the total collection comprised three series, the first with around 2000 cards and the other two with around 1000 each.

Legal issue

The Hungarian Competition Agency (GVH) instigated legal proceedings against the defendant for unfairly influencing consumers' purchasing decisions. It imposed a fine of 1,000,000 Hungarian Forints and banned the defendant from trading. Under § 8 para 1a of Act 57 (1997), which outlaws market behaviour that is unfair and restricts competition, the consumer is regarded as having been misled if, with respect to the product price, false facts pertaining to the product's fundamental properties are given or true facts are presented misleadingly, the product is labelled in a misleading manner or any other misleading information pertaining to the product's fundamental properties is provided. In its decision, the GVH made clear that the defendant had failed to inform consumers about the total number of cards in the collection. The defendant should have been informed about the total collection, which, as the item being

sold, was the real object of the purchase contract, and in particular about the number of cards. Since the defendant had failed to provide this information, consumers could not have realised how long they would have to order the cards for in order to complete the set and what the total cost of the complete collection would be.

The defendant lodged an appeal against the GVH's decision with the Court of First Instance. The Court of First Instance also held that, in the case of products that form part of a series, the complete collection constitutes the object of the contract (the complete collection is the item being sold). The defendant's behaviour had prompted consumers to make the purchase even though they would not have bought the packets had they been aware of the total number of cards in the collection.

The Court of Appeal overturned the verdict reached by the Court of First Instance and upheld the defendant's appeal. It held that the defendant had not misled consumers because it had provided precise information about the price and content of the packets. Consumers had been well aware that they would have to collect the cards on an ongoing basis in order to complete the collection. Since each individual batch could be used in its own right, the individual packets should be viewed as products.

In assessing the Competition Agency's appeal, the Court of Ultimate Resort had explored the question of whether, in the case of a series of mail order deliveries, it was the complete collection or the individual batches that constituted the item being sold and hence precisely what it was that the supplier had to provide accurate information about.

In the reasoning it gave in its appeal submission, the Competition Agency held that individual deliveries were only of limited use. Since the defendant had sent the recipes unsystematically, subscribers would have been unable to collect them on a thematic basis. According to the Competition Agency, consumers were also unable to assess the total costs they would incur when they placed the order.

The LB upheld the appeal. The court ruled that, in the case of products that make up a series, the complete series constitutes the item being sold. In the court's view, individual packets of cards could only be regarded as products if they could be used in their own right. Since the packets were not sent on a thematic basis, consumers were prompted to continue collecting the recipe cards and to cancel the contract only at a later date. The court therefore ruled that the defendant had failed to inform consumers about fundamental properties of the product and was thus in breach of § 8 para 1a of Act 57 (1996), which outlaws market behaviour that is unfair and restricts competition.

Decision

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