

Case Details

Case Details

National ID	1102/07
Member State	Bulgaria
Common Name	Престиж 96"ООД (Prestige 96 Ltd.) v. Commission on Consumer Protection
Decision type	Other
Decision date	26/06/2007
Court	Върховен административен съд (Supreme court, Sofia)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Injunctions Directive, [Article 2, 1.](#)

Headnote

Showing violent and unethical conduct in advertisements directed to children may cause moral and mental disorder in children and constitutes infringement of the prohibition of unfair advertising set out in Art. 39, no. 5 Law on Consumer Protection.

To order the prohibition of an advert that is deemed unfair the Commission on Consumer Protection does not need to rely on the opinion of other specialized public agencies or on other expert opinion, but can use its own faculty of judgment and experience.

The order issued by the Commission on Consumer Protection is issued by the competent officials at the Commission and in accordance with the requirements of the law.

Facts

The case relates to a television advertisement for promotion of chocolate waffles. The advertising video clip showed a teenage boy and a teenage girl on a boat in a lake. The boy brings out two chocolate waffles and shows them to the girl. The girl immediately grabs both waffles. Despite insisting requests on the part of the boy the girl refuses to return the waffles. The camera then shows the boy attacking the girl and the video is interrupted abruptly. The next scene shows the boy alone in the boat eating the waffles. Bubbles in the water indicate that someone is drowning. The clip ends up with the logo: "Share the taste, forget the bottom!"

Following a petition by the Chairman of the Council on Electronic Media, the Commission on Consumer Protection issued an administrative injunctive order on the basis of Art. 35 and 36 Law on Consumer Protection, obligating the advertising company to cease and desist from further dissemination of the advert.

Legal issue

The case was a challenge by the advertising company to the administrative order issued by the Commission on Consumer Protection, banning the television advertisement as constituting unfair advertising.

The Commission on Consumer Protection had based its order on Article 39 no. 5 Law on Consumer Protection.

According to this provision any advertising which may cause moral or mental disorder in children shall be deemed unfair. (It should be noted that this article was repealed in whole following the transposition of the Unfair Commercial Practice Directive in Bulgarian law).

The Administrative Court confirmed the assessment of the Commission on Consumer Protection that the advertisement was in a position to cause moral or mental disorder to children. The Court found the advert to be undoubtedly directed at children considering the type of the advertised product, the time span when the advert was shown on television as well as other elements. Although the advertisement was designed with certain humor, the Court noted the vulnerability of children as a consumer group, the powerful impact of electronic media on their perceptions and the likelihood of introducing confusion in their moral and psychological world by uncritically showing violent conduct and lack of compassion and empathy.

The Court confirmed the power of the Commission on Consumer Protection to issue prohibitive injunctive orders to stop misleading, unfair or unpermitted advertisement as laid down in Art. 35 and 36 Law on Consumer Protection. The Administrative Court dismissed the arguments of the complainant that the Commission on Consumer Protection was not a competent institution to infer conclusions and make judgments on the effects of advertisement on children's morals and health. The Administrative Court indicated that the Commission had consulted the Public Agency on Protection of Children, but noted that even in the absence of such opinion the Commission could rely on its own faculty of judgment and life experience.

Decision

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