

Case law**Case Details****National ID:** 599/2006**Member State:** Bulgaria**Common Name:** Commission on Consumer Protection v. Nestle BG**Decision type:** Other**Decision date:** 18/08/2006**Court:** Софийски районен съд (Court of first instance, Sofia)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**Price Indication Directive, [Article 4, 1.](#)**Headnote**

An advertisement of a promotional game is misleading if it does not indicate in a clear way on the package of the product the conditions for participation in the game, including requirements to buy additional products and send the product's barcode by SMS. The reference on the packaging of the product to an Internet address, where more information can be obtained, is not an acceptable way to compensate for the inadequate information.

Facts

The Nestle company in Bulgaria launched a promotional campaign of its chocolate snack "Kit-Kat". Consumers were urged to participate in a promotional game promising attractive prizes. As conditions for participation in the games consumers had to buy two Kit-Kat products and to send the barcodes to a given telephone number by SMS. These conditions were, however, not clearly stated on the packaging.

The Commission on Consumer Protection (formerly Commission on Trade and Consumer Protection) issued an injunctive order and imposed a fine of 1000 leva. The order was challenged by the Nestle company, but was upheld by Sofia Regional Court.

Legal issue

The Court found the information provided by Nestle to be insufficient and the advertising as a whole to be able to mislead consumers. The referral to an Internet address where consumers could find more detailed information on the conditions for participation in the promotional game was not considered sufficient to compensate this lack of information. The requirement of having to buy two products and to send their barcodes by SMS to a certain telephone number was not clearly stated on the packaging and was a limiting condition for participation in the game. The promotional game could influence consumers in their purchasing decision making them to prefer Kit-Kat over alternative offers and was thus likely to affect consumers' economic behaviour.

The Court confirmed the powers of the Commission on Consumer Protection to issue injunctive administrative order and impose administrative penalty for violations of the prohibition on misleading advertising in Art. 29 para 2 and Art. 33 para 1 Law on Consumer Protection and the Rules of Trade (replaced by Law on Consumer Protection).

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