

## Case law

### Case Details

**National ID:** I-2080-624/2009

**Member State:** Lithuania

**Common Name:** link

**Decision type:** Court decision, first degree

**Decision date:** 11/12/2009

**Court:** Vilnius Regional Administrative Court (Vilnius)

**Subject:**

**Plaintiff:** UAB "Armitana"

**Defendant:** State Consumer Rights Protection Authority

**Keywords:** black list, limited availability, misleading commercial practices, misleading price, price information, price reductions, time-limited promotions

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(d\)](#) Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(h\)](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2.](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1.](#) Unfair Commercial Practices Directive, [Annex I, 7.](#)

### Headnote

(1) A commercial practice where consumers are informed about final discounts, actually following previous discounts and calculated on the basis of a price which was increased a day before such announcement, amounts to misleading actions with respect to the manner in which the price is calculated and the existence of specific price advantage.

(2) Where the "final discounts" are available for three days only, and later on the price is decreased to an even lower level, such commercial practice is assumed to be misleading, because it falsely states that a product will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

### Facts

For a few weeks (a specific time period was not specified in advance) the plaintiff was pursuing the so called "Great sales" campaign, during which consumers were able to purchase shoes with significant discounts. The day after the eventual termination of the campaign and restoring previous prices of certain shoes, the plaintiff sent a great number of SMS messages to members of its loyalty club, stating that in the three following days they would be able to purchase shoes with additional discount from the final sales price. A month after this, the plaintiff decreased the price of certain shoes to an even lower level.

One particular consumer appealed to the defendant, stating that she was misled by the plaintiff. After receiving the SMS and going to the store, she realized that the additional discount was calculated on the basis of a new, increased price rather than from the final price of previous sales.

After conducting an investigation, the defendant concluded that these practices were misleading actions with respect to the manner in which the price is calculated and the existence of specific price advantage, causing the consumer to take a transactional decision that she would probably not have taken otherwise. The defendant additionally stated that the commercial practice, where consumers are informed of final discounts available only for a very limited time and later on certain prices are still decreased to even lower level, violates the general prohibition of the unfair commercial practices, as it is contrary to requirements of professional diligence and materially distorts (or is likely to materially distort) the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed. Therefore, a fine of LTL 6.000 (about 1.714 EUR) was imposed on the plaintiff.

The plaintiff appealed against the defendant's decision before the Vilnius Regional Administrative Court, arguing that:

- (1) This commercial practice cannot be considered as an unfair commercial practice and, in particular, not as a misleading action;
- (2) The plaintiff cannot be punished for unfair commercial practices, because it did not intend to mislead consumers; and
- (3) The defendant was not competent to adopt the decision in question because misleading advertising is controlled by an other administrative body, i.e. the Competition Council.

### Legal issue

The court first concluded that by sending said messages to consumers, the plaintiff was misleading them, and was not complying with the requirements of professional diligence. Furthermore, these messages were likely to materially distort the economic behaviour of the average consumer with regard to the product. Therefore, it was held that the plaintiff's commercial practice amounted to misleading actions with respect to the manner in which the price was calculated and the existence of a specific price advantage.

The court further noted the plaintiff's commercial practice (where the "final discounts" were available for three days only, and later on certain prices were decreased to an even lower level) constituted a misleading commercial practice, because it falsely stated that a product would only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice. Thus, such practice amounted to an unfair commercial practice under the black list, rather than falling under the scope of the general prohibition of the unfair commercial practice.

The court also dismissed the plaintiff's arguments that unfair commercial practices can only be pursued intentionally, as it upheld that an unfair commercial practice can also be committed by negligence.

As to making a distinction between misleading advertising and other misleading commercial practices, the court noted that the defendant was competent to adopt the decision in question because the violations committed by the plaintiff comprised not only of advertising, but also of other actions directly connected with the promotion, sale or supply of a product to consumers.

#### **Decision**

(1) Does a commercial practice where consumers are informed about final discounts, actually following previous discounts and calculated on a basis of a price which was increased a day before such announcement, amount to misleading actions with respect to the manner in which the price is calculated and the existence of specific price advantage?

(2) Does a commercial practice where "final discounts" are available for three days only, and later on the price is still decreased to an even lower level, amount to unfair commercial practice in general?

(3) Is it required that an unfair commercial practice is pursued intentionally?

(4) What are the criteria for making an distinction between misleading advertising and other misleading commercial practices?

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#### **Related Cases**

No results available

#### **Legal Literature**

No results available

#### **Result**

The plaintiff's appeal was dismissed. The decision of the defendant remained unchanged.