

Case Details

Case Details

National ID	Qorti Ta' L-Appell Seduta 24 ta' April 2009. Appell Civili Numru 15/2008
Member State	Malta
Common Name	link
Decision type	Court decision in appeal
Decision date	24/04/2009
Court	Court of Appeal (Valletta)
Subject	
Plaintiff	Maria Geraldine Attard
Defendant	Go Mobisle Communications Limited
Keywords	deceiving commercial practice, misleading advertising

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 4](#).

Headnote

(1) The term "unlimited" in contracts/agreements for internet services is a misleading commercial practice capable of deceiving the average consumer.

(2) The term "unlimited" in the tariff plan is not to be regarded as an exaggerated statement which is not meant to be taken literally.

Facts

Defendant overcharged plaintiff when she had signed a contract stipulating "unlimited" access in the tariff plan.

The court acknowledged the fact that the word "unlimited" was found in writing (inserted by hand into the contract under the title "Tariff Plan").

The plaintiff made express reference to Articles 51A to 51J to Part VII of the Consumer Affairs Act, which renders a commercial practice misleading if it in any way, including its overall presentation, deceives or is likely to deceive the average consumer or is likely to cause him to take a transactional decision that he would not have taken otherwise.

Legal issue

The Court of Appeal reasoned that plaintiff had been offered a service of "five gigabytes download" on an "unlimited" basis and that the Consumer Tribunal was correct in determining that the plaintiff had be to protected, as this was a clear misrepresentation of facts aimed at deceiving the consumer.

Decision

Is the insertion of the word "unlimited" a misleading description for an internet access subscription?

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Result

The appeal was dismissed.
