

Case law

Case Details

National ID: Decision DDK Nr 7/2010

Member State: Poland

Common Name:link

Decision type: Administrative decision, first degree

Decision date: 21/07/2010

Court: The President of the Office of Competition and Consumer Protection in Warsaw

Subject:

Plaintiff: The President of the Office of Competition and Consumer Protection in Warsaw

Defendant: Canal+ Cyfrowy sp. z o.o. with registered office in Warsaw

Keywords: communication medium, confusing marketing, contract law, misleading commercial practices

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2](#). Unfair Commercial Practices Directive, [Chapter 2, Article 5, 4](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#).

Headnote

It is an unfair commercial practice to publish a contract amendment on the last two pages of a monthly magazine for subscribers.

Facts

The defendant, Canal+Cyfrowy sp. z o.o., is a limited liability company, entered in the register of entrepreneurs, which provides customers with television broadcasting services. It notified its customers about the intended changes to the standard subscription contracts (i.e. standard contract for subscription, terms and conditions of the subscription contract and annex "Action - Cash in Advance") by placing the amendments on the two last pages of the subscribers' magazine - Magazine Cyfra+ "PLUS+" (which is regularly delivered to them). Some of the customers lodged a consumer complaint, as they had not been warned about the content of the magazine, and they only became aware of the amendments after receiving a new invoice.

The President of the Office of Competition and Consumer Protection had to determine whether such a practice constitutes an unfair commercial practice with respect to the following facts:

1. The information about changes was placed in a magazine that had a mixed character (entertainment and information).
2. In the past, the defendant used to inform the consumers about amendments in other ways.
3. The customers were not informed about changes by other means of communication.

Legal issue

The President of the Office of Competition and Consumer Protection decided that Canal+ Cyfrowy sp. z o.o. had committed an unfair commercial practice that consisted in informing the consumers about the intended amendments to the subscription contract by placing the amendments in the subscribers' magazine. According to the President, this violated Art. 5 sec. 1, combined with Art. 4 sec. 1 and 2 of the Polish Act on Unfair Commercial Practices.

In the opinion of the President, such practice distorts or is likely to distort the economic behavior of the average consumer whom it reaches or to whom it is addressed.

In determining the unfair character of the practice, the President pointed out the following.

The President assumed that although the content of the information on the planned amendments did not raise concerns, the manner in which it was conveyed to the customers did raise some. The President came to the conclusion that the customers could have been misled due to the manner in which they had been informed about the upcoming amendments to the subscription contract. As a result of the actual lack of information on the planned amendments, they were deprived of their right to terminate the contract. The President emphasized that the mere delivery of a standard form does not automatically mean that the addressee was given the possibility to easily familiarise himself with it. In the given circumstances, the delivery should be effected in a separate and clear form which enables the customer to become aware of the planned amendments to the contract.

The President stated that even a cautious and prudent customer, acting on a best effort basis, should not and does not have to expect that information on amendments in the subscribers' contracts would be placed in a monthly magazine. The customer usually expects that any information on the amendments will be provided to him so that even without examining in detail whether the contract is changed in favour of the customer or not, he is given the possibility to terminate the contract. This was strengthened in the case at hand by the fact that, in the past, the defendant used to inform its customers about planned amendments through a separate letter.

In determining the fact that the defendant's practice violated the collective interest of the consumers, the President indicated that the collective interest of

consumers does not need to refer to an unlimited number of consumers which cannot be individualized, since the lack of individualization does not make it impossible to create a group of consumers who are characterised by the same feature. In the case at hand, the defendant violated the interest of a potentially unlimited group of consumers, i.e. all consumers, because potential customers could be exposed to the defendant's unfair practice.

Decision

Is it an unfair commercial practice to publish a contract amendment on the last two pages of a monthly magazine for subscribers?

URL: [http://decyzje.uokik.gov.pl/dec_prez.nsf/0/1D1DDE1CE450B0F0C1257784002A3A9A/\\$file/DDK-61-8_09_AK-Decyzja%20_Canal%2B%20Cyfrowy%20sp.%20z%20o.o._.pdf](http://decyzje.uokik.gov.pl/dec_prez.nsf/0/1D1DDE1CE450B0F0C1257784002A3A9A/$file/DDK-61-8_09_AK-Decyzja%20_Canal%2B%20Cyfrowy%20sp.%20z%20o.o._.pdf)

Full text: [Full text](#)

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Legal Literature

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Result

The defendant's practice was found to be unfair.

The President ordered to publish the administrative decision on the website of the defendant (by posting a hyperlink to the full text of decision) for a period of 6 months. The defendant was also obliged to publish the decision in a nationwide journal.

The President also imposed on the defendant a financial penalty, paid to the state budget, of the amount PLN 3,569,113.00 (which constituted 0.28% of the defendant's income for the previous financial year).