

Case law

Case Details

National ID: CA/NB/527/29

Member State: Netherlands

Common Name: Consumer Authority, 6 September 2010, Nederlandse Energie Maatschappij/NL Energie

Decision type: Administrative decision, first degree

Decision date: 06/09/2010

Court: Consumer Authority

Subject:

Plaintiff: Consumentenautoriteit ("consumer authority")

Defendant: Nederlandse Energie Maatschappij/NL Energie

Keywords: code of conduct, confusion, contract law, identity of the trader, limited availability, misleading commercial practices, price information, product characteristics, telephone, unwanted solicitations

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(b\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(c\)](#)

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(d\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 2., \(b\)](#)

Unfair Commercial Practices Directive, [Annex I, 26.](#)

Headnote

(1) When performing an unwanted telephone call, a trader must clearly indicate its identity and the purpose of the telephone call.

(2) Contacting consumers on a number of occasions through different call centres, and continuing to do so even when a consumer has requested to stop contacting him, constitutes an unfair commercial practice.

(3) Presenting a product as a limited offer for certain categories of consumers, while the product is offered to all consumers under identical conditions, constitutes a misleading commercial practice. The same applies when stating that there will be no price increase during the term of a contract, while price increases cannot be excluded due to the nature of the product.

(4) Stating that a special offer for a contract is made on the basis of a study relating to the area in which the consumer lives, while in fact the offer is made to all consumers (regardless of the area the consumers live in), constitutes a misleading commercial practice with regard to the motive for the commercial practice.

(5) A trader has no obligation to inform the consumer of the financial conditions set forth in contracts with competitors, so that the trader must not draw attention to the possibility that consumers might have to pay termination costs when terminating an existing contract in order to conclude a new contract with the trader.

(6) Deliberately remaining vague on the question whether the conclusion of a contract would signify the transfer to a new company, is a misleading commercial practice by making confusing communications as regards its competitors.

(7) The violation of commitments set forth in a code of conduct is a misleading commercial practice when these commitments are firm and capable of being verified.

Facts

The defendant is a Dutch power company which advertised its power supply services by means of telemarketing, having its call centre employees contact consumers by telephone and offering them an energy supply contract under certain conditions.

Many complaints were filed against the commercial practices of the defendant. For instance, consumers complained that the purpose of the call was not clearly communicated. Further, there were many complaints of consumers who were contacted several times by different call centres of the defendant.

It should also be noted that the defendant is a member of an association which represents power companies. This association issued a code of conduct by which the defendant stated to be bound on its website. The code of conduct imposes several rules on the companies bound by it.

Legal issue

(1) The Dutch implementation of the UCP Directive requires that, when performing an unsolicited telephone call, a trader clearly indicates its identity and the purpose of the telephone call. Although the call centre employees of the defendant mentioned that they called on behalf of the defendant, the purpose of the call (presenting a new energy supply contract at a reduced price) was not clearly communicated. This was proven by the transcripts of the telephone calls.

(2) The defendant made use of several call centres, which exchanged the data of the persons contacted. Nevertheless, there were many complaints of consumers who were contacted several times by different call centres and who explicitly stated that they wanted their personal data to be deleted from the

systems of defendant. The plaintiff ruled that this commercial practice is contrary to the requirements set forth in the Dutch Civil Code and the Telecommunications Act, which prohibit persistent and unwanted solicitations by telephone.

(3) The plaintiff found that the defendant breached the prohibition on misleading commercial practices by deceiving the consumer in relation to the main characteristics of the product. In particular, it concerned the availability of the product (as the product was presented as a limited offer for certain categories of consumer, while in fact it was offered to all consumers), the benefits of the product (it was stated that there would be no price increases during the term of the contract, while in the energy sector price increases cannot be excluded due to the nature of the product) and the risks (termination costs when terminating the existing supply contract).

(4) The defendant contacted consumers stating that a special offer for an energy supply contract was made to them on the basis of a study relating to the area in which the consumer lives (motive for the commercial practice), while in reality the offer was done to all consumers regardless of the area the consumers lived in. For this reason, the plaintiff concluded that the defendant had misled the consumer.

(5) Consumers who want to terminate their existing energy supply contract (concluded with a competitor of the defendant) generally have to pay termination costs. When the consumer is not informed about such termination costs, the price advantages communicated by the trader are less favourable. Nevertheless, the plaintiff ruled that the trader had no obligation to inform the consumer of the financial conditions imposed by contracts with other companies.

On the other hand, it was clear from the transcripts of the telephone calls that the employees of the call centre expressly stated that consumers would receive a certain price reduction without having any information relating to the consumption of energy of that consumer. In addition, the consumers were informed on the fixed costs they had to pay when concluding a contract, while it was not made expressly clear that such fixed costs should be paid separately for each product ordered (gas, electricity, etc.). Also, it was not made clear that the fixed costs were considerably higher than the costs imposed by the competitors of the defendant. The plaintiff therefore decided that the defendant breached its obligations (misleading commercial practice in relation to the price of the product).

(6) The plaintiff pointed out that it is very unclear for a consumer to understand that the defendant is not the same company as the existing providers. The manual for the call centre employees of the defendant clearly stated that they preferably should remain vague on the question whether the conclusion of a contract would signify the transfer to a new power company, by continuously emphasizing that "nothing will change for you" and that the consumer "will stay with its own provider for what service and service quality are concerned". It was held that this practice is misleading by making confusing communications as regards to competitors.

(7) The defendant is a member of an association which represents power companies. This association issued a code of conduct by which the defendant stated to be bound on its website.

The code of conduct states that when consumers only request information, they should only receive this information, and not be presented with product or service offerings. In this case, however, it appeared that the consumer either did not receive the information when requested, or was bound by a contract to which he had not consented.

Further, the code of conduct states that a member cannot take advantage of the inexperience or vulnerability (age) of the consumer. However, it was clear from the transcripts that the employees of the defendant took advantage of the high age of several of the persons that were contacted (insisting, avoiding questions, etc.).

The plaintiff concluded that the defendant violated Dutch law by not complying with commitments contained in a code of conduct, as these commitments are firm and capable of being verified.

Decision

(1) Is it an unfair commercial practice to not clearly mention the identity and the commercial purpose at the beginning of a telephone call?

(2) Is it an aggressive commercial practice to make persistent and unwanted solicitations by telephone?

(3) Is it an unfair commercial practice to give misleading and/or wrong information concerning the main characteristics of the product (such as the availability and benefits of -- and risks related to -- the power supply contracts)?

(4) Is it an unfair commercial practice to give misleading and/or wrong information concerning the motives for the commercial practice and the nature of the sales process?

(5) Is it an unfair commercial practice to give misleading and/or wrong information concerning the price, the calculation of the price and the price gains?

(6) Is it an unfair commercial practice to give confusing information concerning competitors in the power industry?

(7) Is it an unfair commercial practice to act in violation of an applicable code of conduct?

URL: http://www.consumentenautoriteit.nl/pv_obj_cache/pv_obj_id_89344F66200C75CB45D85B405A98D8D993040F00/filename/Sanctiebesluit_NEM_0.pdf

Full text: [Full text](#)

Related Cases

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Result

The defendant was held to have breached most of the legal rules which were invoked and financial sanctions were imposed amounting to 1.020.000 EUR.