

Orzecznictwo

Dane sprawy

Identyfikator krajowy: Decision no. RPZ-28/2010

Państwo członkowskie: Polska

Nazwa zwyczajowa: N/A

Rodzaj decyzji: Decyzja administracyjna w pierwszej instancji

Data decyzji: 09/12/2010

Sąd: Prezes Urzędu Ochrony Konkurencji i Konsumentów, Delegatura w Poznaniu

Temat:

Powód/powódka: The President of the Office of Competition and Consumer Protection

Pozwany/Pozwana: Polska Telefonia Cyfrowa sp. z o.o. with its registered office in Warsaw

Słowa kluczowe: limited availability, misleading commercial practices, misleading omissions, misleading statements

Artykuły dyrektywy

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

Uwaga główna

Constitutes an unfair commercial practice, the indication in an advertising leaflet of certain categories of consumers which are not eligible to make use of a service offered by a trader, while other categories are equally excluded from this offer as stated in the general terms and conditions of the offer but not indicated in the leaflet.

Fakty

The defendant, a mobile operator of the "Era" network, is a company that provides customers with telecommunication services.

The object of the administrative proceedings was the advertising campaign of "Era Sieć Rodzinna" (Era Family Network) by which unlimited phone call services inside the family network were offered free of charge.

During the abovementioned campaign, advertising leaflets stated that everyone could join the Era Family Network, except for subscribers to business tariffs. In reality, the terms and conditions of the promotion indicated that this service could not be used by neither business subscribers nor other listed subscribers. In addition, the terms of the promotion set forth conditions which were to be fulfilled in order to use the mentioned services.

The President of the Office of Competition and Consumer Protection started administrative proceedings in order to determine whether such practices may be deemed as infringing the prohibition on unfair commercial practices.

Zagadnienie prawne

Does advertising a commercial offer as being accessible for all consumers, while in fact the terms and conditions state that several categories of users are excluded from the offer, constitute an unfair commercial practice?

Decyzja

It was held that the information concerning the group of persons who are eligible for a promotion, is the most important element of such advertisement and is first noticed by the consumer. The defendant did not include in the advertising leaflet the relevant information on the scope of the subscribers who cannot make use of the services of Era Family Net.

Such commercial practice significantly distorts or may distort market behavior of an average customer, who may expect that the exceptions listed in the leaflet are full and sufficient. The President states that the reference to the terms of the promotion offer should not be used to rectify the information included in the leaflet. This practice is contrary to good customs.

Pełny tekst: [Pełny tekst](#)

Powiązane sprawy

Brak wyników

Literatura prawnicza

Brak wyników

Wynik

The market practice of a trader was found to be unfair. There was no financial penalty imposed on the trader.