

Case law

Case Details

National ID: A502-1684/2010

Member State: Lithuania

Common Name: link

Decision type: Supreme court decision

Decision date: 23/12/2010

Court: Supreme Administrative Court of Lithuania (Vilnius)

Subject:

Plaintiff: UAB "Armitana"

Defendant: State Consumer Rights Protection Authority

Keywords: black list, consumer rights, lex specialis, misleading commercial practices, professional diligence

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(d\)](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2.](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(d\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 4., \(c\)](#) Unfair Commercial Practices Directive, [Annex I, 7.](#)

Headnote

(1) A commercial practice by which consumers are informed on price decreases following previous decreases, and where the announced decreases are calculated on the basis of a price which was increased one day before such announcement, amounts to an unfair commercial practice.

(2) It is not necessary for a commercial practice to cause actual consequences in order to consider the practice as unfair.

(3) A commercial practice by which the terms of an offer are announced as being available for a limited period of time only, whereas in reality the terms are even more advantageous after said period, amounts to the blacklisted practice of falsely stating that a product will only be available on particular terms for a very limited time.

Facts

For a few weeks - a specific time period was not specified in advance - the plaintiff, a shoes seller, was pursuing the so called "Great sales" campaign during which consumers were able to purchase shoes with significant discounts. The day after 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. Moreover, a month after this, the plaintiff decreased the price of certain shoes even to a lower level than the price offered to the members of the loyalty club.

The defendant concluded that the above plaintiff's practices were misleading actions with respect to the manner in which the price is calculated and concerning the existence of a specific price advantage, causing the consumer to take a transactional decision that he would likely not have taken otherwise.

The defendant further stated that the commercial practice of informing consumers about final discounts available only for a very limited period of time, whereas in reality certain prices are decreased to an even lower level later on, violates the general prohibition on unfair commercial practices as it is contrary to the requirements of professional diligence and materially distorts or is likely to materially distort the economic behaviour of the average consumer who it reaches or to whom it is addressed. Therefore, the defendant imposed a fine of LTL 6,000 (EUR 1,739) on the plaintiff.

The plaintiff appealed against the defendant's decision before Vilnius Regional Administrative Court. The court rejected the appeal and the plaintiff further appealed to the Supreme Administrative Court of Lithuania.

Legal issue

(1) The court first noted that the main issue is whether the statement "extra... discount from final sale price" is misleading because the final sale price was calculated by the plaintiff from the price of the day when the text message was sent instead of the price which was actual for a certain time before.

The court examined the words "last sale" and "extra ... discount" in accordance to its usual meaning and concluded that the plaintiff's statements could create an impression that the members of the plaintiff's loyalty club could purchase certain goods under exclusive conditions and pay the price which was lower than the one actual for a certain time period before. The court therefore agreed that the plaintiff's campaign did not comply with the requirements of professional diligence and was likely to materially distort the economic behaviour of the average consumer with regard to the product. The court concluded that this was sufficient to hold the plaintiff's commercial practice unfair.

(2) The court further dismissed the plaintiff's defense that it is necessary to establish that the commercial practice caused certain consequences. The court noted that it is sufficient that the commercial practice is likely to materially distort the economic behaviour of the average consumer, hence it is not required that the consumer actually took a single transactional decision that would not be taken otherwise.

(3) Next, the court agreed with the court of first instance which qualified the plaintiff's activities under the blacklist provision prohibiting falsely stating that a product will only be available on particular terms for a very limited time or that it 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. In this regard, the court elaborated that this provision is a *lex specialis* with respect to general prohibition of unfair commercial practices.

Decision

(1) Does a commercial practice by which consumers are informed on price decreases following previous decreases, and where the announced decreases are calculated on the basis of a price which was increased one day before such announcement, amount to an unfair commercial practice?

(2) Is it necessary for a commercial practice to cause actual consequences in order to consider the practice unfair?

(3) Does a commercial practice by which the terms of an offer are announced as being available for a limited period of time only, whereas in reality the terms are even more advantageous after said period, amount to the blacklisted practice of falsely stating that a product will only be available on particular terms for a very limited time?

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Result

The plaintiff's appeal was dismissed. The decisions of the defendant and Vilnius Regional Administrative Court remained unchanged.