

## Case law

### Case Details

**National ID:** CA/NB/412/59

**Member State:** Netherlands

**Common Name:** Consumer Authority, 30 November 2010, Ticket Unlimited B.V.

**Decision type:** Administrative decision, first degree

**Decision date:** 30/11/2010

**Court:** Consumer Authority

**Subject:**

**Plaintiff:** Consumer Authority

**Defendant:** Ticket Unlimited B.V.

**Keywords:** identity of the trader, material information, price information, product characteristics

### Directive Articles

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

### Headnote

(1) An invitation to purchase products and/or services relating to a non-existing event, constitutes a misleading commercial practice.

(2) An advertisement, stating that an offer is only available on the website of a trader, whereas in reality the offer is made by other traders as well, constitutes a misleading commercial practice.

(3) The fact that a trader is a reseller of products and/or services (i.e. not an official point of sale), constitutes essential information in order to take an informed transactional decision. It is not sufficient that the trader mentions this fact in its general terms and conditions.

(4) The omission of the following information in an invitation to purchase constitutes a misleading commercial practice:

- the fact that products and/or services are resold;
- the exact indication of place and rank in an event for which products and/or services are sold;
- the fact that the ticket will be invalid when it is resold;
- the fact that the legal form of the trader is not mentioned;
- the inclusion of taxes and delivery charges in the advertised price.

### Facts

The defendant is a reselling company that offers concert tickets and tickets for other events on its website [www.ticketunlimited.nl](http://www.ticketunlimited.nl).

With a letter dated 25 August 2009, the Consumer Authority informed the defendant (and other known ticket reselling companies) to which statutory requirements these companies are subject when offering tickets online. Consequently, several checks were performed by the Authority as to verify compliance by the reselling companies with the requirements set forth by the relevant legal provisions (as indicated in the letter).

With a letter dated 24 March 2010, the defendant was informed by the Authority that its website did not meet several legal requirements. The defendant was given a period of two weeks to modify its website accordingly as to ensure compliance with the infringed provisions. Although the defendant had stated to amend its website, the Authority later established that this website was still not amended properly.

First, the defendant advertised all of its offerings on the website with the standard slogan to buy the "very last, hard to get tickets" for a particular event, while in reality, some of the tickets were available with other traders. It was further established that the defendant offered concert tickets for concerts that did not take place (the announced concert date and place did not correspond to the programme of the concert hall involved).

Next, the fact that the defendant was a reseller of event tickets, hence not an official point of sale of the tickets, was only mentioned in the general terms and conditions of the defendant. In the information section of the website, it was merely mentioned that the defendant was a "ticket mediation company".

As to the main characteristics of the tickets, the Authority noted that the consumers were not duly informed that the tickets were resold. Next, the Consumer Authority noted that several tickets were offered without exact indication of place and rank in the event and that no information was given in the invitation to purchase as to the fact that an exact location was not possible or when there was a possibility that places will not be adjacent when ordering several tickets. It was also established by the consumer Authority that in some cases, the applicable general conditions of the original seller stated that the tickets would become invalid when resold. Such information was never communicated to the consumer (not in the invitation to purchase, not on any other occasion).

Further, the invitation to purchase did not clearly indicate the identity of the trader, as this should also include the legal form of the trader. Such information

was only consultable after clicking on the "Conditions" section of the website.

Finally, it was established that the ticket price mentioned in the invitation to purchase was the ticket price excluding applicable VAT and delivery charges.

#### **Legal issue**

(1) Based on the consideration that the defendant offered tickets for a concert of the artist Souljah Boy on 21 December 2010 in "De Melkweg", Amsterdam, while "De Melkweg's" online concert programme did not mention any such concert on that date, the Consumer Authority concluded that the defendant offered tickets for a non-existing event. In a short reasoning, the Authority concluded that the offering for non-existing concerts constitutes a misleading commercial practice.

(2) It was held by the Authority that the defendant's recurring statement (i.e. for all offerings without distinction) that the tickets are scarce and only available at its website ("very last, hard to get tickets"), creates the impression that these tickets are no longer available at the official selling point. As this was certainly not always the case, the Authority ruled that such a statement constitutes incorrect and misleading information which is likely to cause the consumer to take a transactional decision that he would not have taken otherwise.

(3) The Consumer Authority held that the fact that the defendant was a reseller of event tickets, constitutes essential information for the consumer, as the consumer needs this information to understand that the defendant is not an official point of sale of the tickets. That the defendant only mentioned this information in its general conditions was considered to be misleading, as the Authority was of the opinion that the general conditions are not the appropriate place to inform consumers on the identity and characteristics of a trader. Moreover, the mentioning in the information section of the website that the defendant was a "ticket mediation company", is not sufficient as such information is not of the nature as to allow the consumer to fully understand that the defendant is a reseller only.

(4) The Authority first noticed that an invitation to purchase on a website is not limited by any physical boundaries (such as the size of a billboard or the limited size of a newspaper page). With respect to the information offered in the invitation to purchase, the Authority considered the following:

- As to the fact that it was not clearly indicated that the tickets were resold, the Authority held that such information is essential as it can urge the consumer to make additional inquiries (risks of such purchase, etc.). In addition, a consumer will most likely not investigate whether or not a ticket is resold. As a result, such information must be indicated in an apparent and clear way in the invitation to purchase.

- With respect to the exact indication of place and rank in the event (e.g. exact place of a seat), the Consumer Authority held that such information is of an essential nature as the consumer's transactional decision will most likely be based on this information. This is also the case when an exact location is not possible or when there is a possibility that places will not be adjacent when ordering several tickets.

- With regard to the fact that the ticket will be invalid when it is resold (as stated in the general conditions of the original seller), the Authority held that such information constitutes essential information as the risk exists that the consumer who buys the ticket will not be allowed to the event. If such information is not communicated to the consumer in the invitation to purchase, the consumer can reasonably expect that he will have access to the event on showing the ticket. The consumer must be duly warned so that he can assess whether to take the risk to purchase a resold ticket. It is noted that this information is not the kind of information one can expect the consumer to investigate.

- As to the identity of the trader, it was stated that the invitation to purchase should clearly mention the identity of the trader, including its legal form. The fact that such information is provided in the general conditions of the website (only), is insufficient.

- The Consumer Authority stated that the prices indicated in an invitation to purchase must always be the prices inclusive of taxes and delivery charges.

#### **Decision**

(1) Does offering products and/or services for a non-existing event, constitute a misleading commercial practice?

(2) Does an advertisement, stating that an offer is only available on the website of a trader, whereas in reality the offer is made by other traders as well, constitute a misleading commercial practice?

(3) Does the fact that a trader is a reseller of products and/or services (i.e. not an official point of sale), constitute essential information in order to take an informed transactional decision? In addition, is it sufficient that the trader mentions this fact in its general terms and conditions?

(4) Does the omission of the following information in an invitation to purchase, constitute a misleading commercial practice:

- the fact that products and/or services are resold?;

- the exact indication of place and rank in an event for which products and/or services are sold?;

- the fact that the ticket will be invalid when it is resold?;

- the fact that the legal form of the trader is not mentioned?;

- the inclusion of taxes and delivery charges in the advertised price?

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#### **Related Cases**

No results available

#### **Legal Literature**

No results available

#### **Result**

The Consumer Authority imposed a penalty payment of EUR 5.000 to a maximum of EUR 100.000 per violation per week.