

Case law

Case Details

National ID: Slovak Trade Inspection , 03/05/2011 ref. code: P/0046/05/2011

Member State: Slovakia

Common Name:link

Decision type: Administrative decision, first degree

Decision date: 03/05/2011

Court: Slovak Trade Inspection, (Žilina) Slovak Trade Inspection, Inspectorate with its registered seat in Žilina, Žilina district

Subject:

Plaintiff:

Defendant: Azet.sk, a.s.

Keywords: aggressive commercial practices, decision to purchase, free, information obligation, informed decision, right of cancellation

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Article 5, 4](#). Unfair Commercial Practices Directive, [Chapter 2, Section 2, Article 9, \(a\)](#) Unfair Commercial Practices Directive, [Annex I, 20](#). Unfair Commercial Practices Directive, [Annex I, 29](#).

Headnote

A commercial practice, consisting in the offering of a "free of charge" service, without giving any information that this service automatically turns into a paid service, qualifies as an unfair commercial practice.

Facts

The defendant was an internet portal provider. It advertised a service called "Pokec Plus+" (Chat Plus+). The promotion of this service included information about the "Pokec Plus+" additional service (enabling one to see information about persons visiting ones profile and picture gallery, activation of a speed mail archive and a personal chat room, 1GB space for picture gallery, etc.). The service was promoted as free of charge during a period of 15 days, and the activation of this service required sending an SMS to a certain number in a certain form. The advertisement also mentioned that "Pokec Plus+" was a prepaid service.

After the lapse of 15 days period, the free of charge service automatically turned into a paid service. Such information was, however, not provided in the advertisement. The consumer was not provided with the information about the subsequent charge for the service.

The defendant requested consumers to pay for the service, which they had initially ordered as free of charge. Moreover, the consumers were neither informed about the obligation to give a cancellation notice before the 15 day period, in case they did not want to be charged for using the service.

Legal issue

The court decided that the defendant's conduct constituted a breach of the Slovak Consumer Protection Act.

According to the court, the conduct of the defendant consisting of the omission to provide information to consumers on the fact that a service, advertised as "free of charge", automatically turns into a paid service after a given period of time and that the consumers have the obligation to notify the defendant via an SMS on the fact that they do not wish to be bound to the paid service, constitutes an aggressive commercial practice.

The defendant distorted the economic behaviour of an average consumer. Therefore, consumers were deceived and deprived of their possibility to take an informed transactional decision.

The court concluded that the defendant committed an aggressive commercial practice.

Decision

Does a commercial practice, consisting in the offering of a "free of charge" service, without giving any information that this service automatically turns into a paid service, qualify as an unfair commercial practice?

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Result

The administrative body imposed a fine of € 500.