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Case Details

National ID: 2S-3

Member State: Lithuania

Common Name:link

Decision type: Administrative decision, first degree

Decision date: 04/02/2010

Court: Competition Council of the Republic of Lithuania (Vilnius)

Subject:

Plaintiff:

Defendant: UAB "Armila"

Keywords: authorisation, black list, economic behaviour, endorsement, health and safety, illness, material distortion, misleading advertising, misleading commercial practices

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(d\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(b\)](#) Unfair Commercial Practices Directive, [Annex I, 4.](#) Unfair Commercial Practices Directive, [Annex I, 17.](#)

Headnote

(1) Advertising a product as an officially approved medicine, whereas in reality it is not approved as such by a competent public authority, constitutes a blacklisted misleading commercial practice (item 4 UCP black list).

(2) Advertising a product as able to cure illnesses, whereas in reality this product has not been approved by a competent public authority as a medicine, constitutes a blacklisted misleading commercial practice (item 17 UCP black list).

Facts

The defendant advertised a cream called "Garmastan" showing blood on women's nipples and stating "After starting breastfeeding, nipples become sensitive and cracked and blood can get into milk. Thus, mom feels pain and a baby gets bad taste. Breastfeeding will not be a misery if you use cream "Garmastan" before and after."

The following statements were also used in the advertisements: "Read the informational leaflet carefully and use the medicine according to the instructions. For the use of the medicine and possible side effects please consult a doctor or a pharmacist before" and "Contraindications and interaction with other medicines (...) suppress present inflammation".

Legal issue

(1) The Council examined compliance of the defendant's advertisements with the misleading advertising regulation which had been in place before introduction of the unfair commercial practices regulation.

According to the Council, the wording used by the defendant in the advertisements concerned, leads the consumer to believe that the cream is a medicine, whereas in reality the product was not registered as such with the competent Lithuanian authorities.

As a result, so held the Council, such statement should be considered as a blacklisted unfair commercial practice, i.e. a false claim that a product has been approved by a competent public authority (item 4).

(2) The Competition Council further referred to the defendant's statements "Garmastan also protects from the infection which can result in a breast inflammation, i.e. mastitis" and "Contraindications and interaction with other medicines (...) suppress present inflammation". It was noted by the Council that these statements indirectly imply that the cream "Garmastan" is able to cure illnesses. However, since the cream "Garmastan" was not registered with the competent public authority, there was no official document proving the said ability.

Therefore, the Council concluded that the said statements should be considered as falsely claiming that a product is able to cure illnesses, dysfunction or malformations, i.e. the blacklisted misleading commercial practice (item 17).

Decision

(1) Does advertising a product as an officially approved medicine, whereas in reality it is not approved as such by a competent public authority, constitute a blacklisted misleading commercial practice?

(2) Can a product, which is not approved by a competent public authority as a medicine, be advertised as able to cure illnesses?

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Result

A number of the defendant's advertisements were concluded to be an unfair commercial practice and a misleading advertising. A fine of LTL 10,000 (approx. EUR 2,857) was imposed on the defendant.

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