

## Case law

### Case Details

**National ID:** MAO:40/11

**Member State:** Finland

**Common Name:** link

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

**Decision date:** 31/01/2011

**Court:** The Market Court (Helsinki)

**Subject:**

**Plaintiff:** DNA Oy

**Defendant:** Saunalahti Group Oyj

**Keywords:** advertisement, age, average consumer, identity of the trader

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 3](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#).

### Headnote

A commercial practice should be considered misleading when information is omitted on the trader's identity.

Constitutes a misleading commercial practice, when the trader distorts the economic behaviour of consumers who are particularly vulnerable to the practice because of their age or credulity.

### Facts

The defendant marketed a telephone subscription (so called "Kotipuhelin" –subscription) and the related telephone apparatus. The case relates to telemarketing and distance selling, which is regulated by the Consumer Protection Act. The marketing practices took place during the summer and autumn of 2009.

The defendant developed the Kotipuhelin –subscription as a cheaper option to replace a fixed net subscription. Together with the Kotipuhelin –subscription, the defendant marketed both original desk telephone and wireless telephone models.

From the point of view of the customer, the use of the telephone models offered was comparable to the use of an original desk telephone. The difference was, however, that the telephone apparatus of the Kotipuhelin –subscription operated on electricity and had a rechargeable battery. Hence, the telephone also functioned outside of the consumer's home. The phone apparatus also included a SIM-card, which required a PIN-code when the phone was switched on.

Furthermore, since the Kotipuhelin –subscription operates in a GSM-net, it did not support such additional services as an emergency phone, hearing aid, fax or alarm systems connected to a fixed subscription.

The plaintiff requested the court to prohibit the defendant under penalty of EUR 100.000 fine from marketing its phone subscriptions in a manner which:

- a) is misleading to the customer by not clearly indicating the identity of the trader or whose product are offered or by not clearly informing the customer that the defendant is selling its own products;
- b) does not clearly set out the facts which have an effect on the purchase decision;
- c) takes advantage of the illness, high age or other personal factor of the customer which decreases the evaluation ability.

The plaintiff had produced evidences that the defendant's marketing practices were violating the aforementioned prohibitions. The plaintiff had heard witnesses and got feedback from e-mails sent by various consumers.

### Legal issue

The court considered that, on the basis of the evidence produced by the plaintiff, in the advertisement of the "Kotipuhelin"- subscription the consumer has not been told about the fact that the connection operates in a GSM-net.

Next, the defendant did not substantially disprove that the misunderstanding caused to consumers was not a result of the fact that the marketing materials did not include sufficient information on essential product characteristics.

In addition, the court considered that the defendant had not taken into account the particularly vulnerable position of consumers of a certain age.

Based on the aforementioned, the court stated that the marketing actions of the defendant had been conducted against the prohibition on unfair commercial practices.

### Decision

Under what circumstances may advertisements constitute misleading practices?

URL: <http://www.oikeus.fi/markkinaoikeus/53611.htm>

Full text: [Full text](#)

**Related Cases**

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**Legal Literature**

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**Result**

The court granted plaintiff's claim.