

Case Details

Case Details

National ID	2S-11
Member State	Lithuania
Common Name	2S-11
Decision type	Administrative decision, first degree
Decision date	17/07/2013
Court	Competition Council of the Republic of Lithuania
Subject	
Plaintiff	Competition Council of the Republic of Lithuania
Defendant	UAB „Studio moderna“
Keywords	black list, cure, dysfunctions, health and safety, illness, inaccurate information, malformations, material information, misleading advertising

Directive Articles

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

Headnote

Advertising which includes statements giving the reasonable impression that a product is a medical device, whereas in reality the product is not, can constitute a misleading commercial practice despite the fact that this product is not directly introduced as a medical device?

Facts

The defendant launched an advertisement for magnetic tape and magnetic back belt impact, stating that it has positive impact on illness or functional disorders.

The advertisement included statements such as “Get rid <...> of joint pain”, “Forget <...> the hurt of waist”, “Magnetic field relieves the pain”, “Magnetic field reveals back pain”, “Magnetic tapes of Dr. Levin returns flexibility of joints”, “Magnetic field improves the condition”, etc.

The plaintiff held that this was misleading as the products are presented as medical devices, whereas in reality they are not. Medical devices need be tested and approved by the national authorities.

The defendant, on its turn, argued that the products were not directly described as medical devices in the advertisement.

Legal issue

The court concluded that the statements in the advertisement with respect to the positive impact of Dr. Levin’s magnetic tapes and magnetic back belt could have given a reasonable impression for an average consumer that the results of the products concerned would have been those of medical devices.

As the products were not approved as medical devices by the competent authorities, so the court held, plaintiff’s

advertisement constituted a misleading commercial practice (falsely claiming that a product is able to cure illnesses, dysfunction or malformations).

The court ruled this way, despite the fact that plaintiff had shown that there was some evidence that the defendant's products has some positive impact on health..

Decision

Does advertising which includes statements giving the reasonable impression that a product is a medical device, whereas in reality the product is not, constitute a misleading commercial practice despite the fact that this product is not directly introduced as a medical device.

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Result

The defendant's advertising statements were considered to amount to unfair commercial practices and misleading advertising. A fine was imposed on the defendant.
