

Case law

Case Details

National ID: A858-370/2012

Member State: Lithuania

Common Name: A858-370/2012

Decision type: Court decision in appeal

Decision date: 16/03/2013

Court: Supreme Administrative Court of Lithuania

Subject:

Plaintiff: UAB „Omnitel“

Defendant: Competition Council

Keywords: black list, discounts, free, misleading omissions, price, price information

Directive Articles

Unfair Commercial Practices Directive, [Annex I, 20](#).

Headnote

Advertising services as free of charge, whereas the applicable terms and conditions state that certain fees will apply, constitutes an unfair commercial practice.

Facts

The defendant, the Competition Council, had imposed a fine on the plaintiff for the advertisement “Zero cents <...> in Omnitel network”, claiming that the service would be free of charge.

This fine was imposed by the plaintiff due to the fact that consumers had to choose one out of three payment plans in order to use the free services of the plaintiff.

Moreover, in all cases consumers had to pay the plaintiff at least a subscription fee. Consequently, there was no possibility to use the services of the plaintiff without paying any costs or charges.

The plaintiff appealed to the decision of the plaintiff with the court, stating that consumers were informed that additional terms would apply.

Legal issue

The court stated that the advertisement of the plaintiff constitutes an unfair commercial practice because the service is described as free despite the fact that the consumer has to pay for the right to use such service.

Such practice is prohibited by article 7 (18) of the Law on Prohibition of Unfair Business-To-Consumer Commercial Practices as a misleading commercial practice.

According to the court, in this case it is sufficient to establish that the advertisement includes a description of a product as “free” or similar and the consumer has to pay anything other than the unavoidable cost of responding to the offer and collecting or paying for delivery of the item, in order to establish a presumption that consumer’s economical behaviours was distorted.

According to the court, the plaintiff had provided no evidence that applicable fees constitute unavoidable cost of responding to the offer.

The advertisement was considered misleading despite the fact that consumers were informed about the fact that additional terms were applicable.

Decision

Does advertising services as free of charge, whereas the applicable terms and conditions state that certain fees will apply, constitute an unfair commercial practice?

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Result

The plaintiff’s request was denied.