

Case law

Case Details

National ID: A502-731/2013

Member State: Lithuania

Common Name: A502-731/2013

Decision type: Administrative decision in appeal

Decision date: 23/05/2013

Court: Supreme Administrative Court of Lithuania

Subject:

Plaintiff: UAB „Torpol Baltija“

Defendant: State Consumer Rights Protection Authority

Keywords: authorisation, black list, cure, dysfunctions, endorsement, illness, malformations

Directive Articles

Unfair Commercial Practices Directive, [Annex I, 4](#). Unfair Commercial Practices Directive, [Annex I, 17](#).

Headnote

(1) Not mentioning the true purpose of a products sale event constitutes a misleading commercial practice.

(2) Advertising products which can only be advertised when an official permit/authorization has been obtained, when the trader has not obtained such permit/authorization, constitutes a misleading commercial practice.

Facts

In order to attract potential customers, the plaintiff, a seller of medical devices, adopted a strategy of randomly circulating invitations to events, organized by the plaintiff, which were allegedly educational conferences. In reality, these were events where the plaintiff commercialized its own products. Many of the invitees were people with an illness which could allegedly be cured by the products of the plaintiff.

The impression that these events, which were organized in venues that were not commonly used for trading, were special and were only open to a limited number of visitors, was strengthened by several additional features of the event. For example, the entrance to the event was paying (hence, not free), the number of invitees was limited and there was a visitor registration at the beginning of the event.

During the event, participants could receive small gifts from the plaintiff, use some services for free, and take part in a lottery, all with an eye on promoting the products of the plaintiff.

The visitors, who may not have intended to purchase any products, were encouraged to urgently purchase the advertised products.

Also, participants of informational presentations that were held, were asked to name their illnesses and afterwards, according to the nature of the illness, were convinced of the positive qualities and the use of the proposed medical devices (sold by the plaintiff).

Lastly, the plaintiff did not have the required official authorizations to market and distribute the medical devices concerned.

Legal issue

The court confirmed that the plaintiff had provided the consumers with misleading information on the qualities of its products.

The court held that the plaintiff was only allowed to provide information to the consumers which was established by the official manufacturer of medical devices and which is approved by the authoritative institutions. The plaintiff had no such approval, which is contrary to the prohibition on misleading commercial practices.

Furthermore, the court held, consumers were misinformed on the true nature of the event that was organized by the plaintiff. Whereas that event was advertised as an educational conference, it was established that the true purpose of the event was the promotion and direct sales of the plaintiff's products.

The court stated that the psychological pressure during the event (such as the special incentives applied to stimulate the purchase of the medical devices) had not only created a precondition for distorting the economic behavior of the consumer, but, taking into account the specific vulnerability of the average consumer invited to the conference (amongst whom many had an illness), had also effectively distorted such consumers' economic behavior.

Decision

(1) Does not mentioning the true purpose of a products sale event, constitute a misleading commercial practice?

(2) Does advertising products which can only be advertised when an official permit/authorization has been obtained, when the trader has not obtained such permit/authorization, constitute a misleading commercial practice?

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Result

The plaintiff's request was denied.