

Judikatúra**Údaje o veci**

Národný identifikačný prvok: Slovak Trade Inspection, 21/08/2013, ref. code: P/0155/05/13

Členský štát: Slovensko

Všeobecný názov: Slovak Trade Inspection, 21/08/2013, ref. code: P/0155/05/13

Typ rozhodnutia: Správne rozhodnutie, prvý stupeň

Dátum rozhodnutia: 21/08/2013

Súd: Slovenská obchodná inšpekcia, Inšpektorát Slovenskej obchodnej inšpekcie so sídlom v Žiline pre Žilinský kraj

Predmet:

Žalobca: Unknown

Žalovaný: MEDIAMAC, s.r.o.

Kľúčové slová: average consumer, contract law, material information, misleading commercial practices, misleading omissions, right of withdrawal, terms & conditions, trader's commitments, transactional decision

Články smernice

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1.](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1.](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 2.](#)

Úvodná poznámka

Substantially limiting the consumer's rights in the trader's terms and conditions, which are not made clearly and visibly available to the consumer, constitutes an unfair commercial practice.

Skutkový stav

During inspections on the defendant's commercial practices, the administrative established some practices which it considered to infringe the law.

According to the Complaint Procedure of the trader, the consumer was obliged to bear all the costs related to the complaint procedure in case the complaint was refused and the consumer was not duly informed about the conditions of the complaint procedure.

The trader did not state the name of the register in which it is registered and the number of entry on its webpage.

In the "Withdrawal from contract" part of the Complaint Procedure and in Terms and Conditions, the trader stated two different price return periods - 15 working days and 7 calendar days respectively.

The Terms and Conditions stipulated that the period for expedition of a product to the consumer is 30 days from delivery of the product to the trader. This period could be prolonged by the trader for an indefinite time and the Terms and Conditions also stipulated that in the event that the customer did not pick his or her product within the period of seven days from its delivery to the trader, the trader is authorized to charge the consumer with € 16 for every day of the storage of the product.

The trader also reserved a right to substitute the defective product with another product with comparable technical parameters.

The Complaint Procedure, specifically the "Withdrawal from contract" part, stipulated that by submitting an order, the consumer confirmed that the trader had fulfilled its information obligations pursuant to Section 10 of Consumer Protection Code. Information regarding weight, measures and other information about the products stated in the trader's catalogues on his website were considered only indicative.

The Complaint Procedure, specifically the "Withdrawal from contract" part, stipulated that in case of the consumer's withdrawal from the contract, the trader would return the paid price for the product, or a portion of this price reduced by 1% for every day of the usage of the product by the consumer.

If the consumer breached any of the obligations in Terms and Conditions, he or she could no longer withdraw from the contract. The trader was therefore not obliged to return the money and the consumer needed to reimburse the re-delivery costs.

Právna záležitosť

Does substantially limiting the consumer's rights in the trader's terms and conditions, which are not made clearly and visibly available to the consumer, constitute an unfair commercial practice?

Rozhodnutie

The administrative body repeated that the producer, trader, importer or supplier may not deceive the consumer; in particular, they may not state untrue, undocumented, incomplete, inaccurate, obscure or ambiguous information or withhold information concerning the characteristics of a product or service or concerning purchase terms and conditions.

Unfair commercial practices shall be prohibited. A commercial practice shall be unfair if it is contrary to the requirements of professional diligence and if it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer to whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers. A commercial practice shall be considered as misleading if it causes or is likely to cause the consumer to enter into transaction that he or she would not have entered otherwise because it contains false information and is therefore untruthful or in any way deceives or is likely to deceive the average consumer, even if the information is factually correct.

Based on the above, the administrative body held that the trader should not impose obligations on consumers without legal grounds. The trader, so the body

held, is obliged to duly inform the consumer about the conditions for, and method of filing a complaint, including the information on where a complaint can be submitted and on the performance of warranty repairs. The conditions connected to a complaint procedure must be displayed on a visible place accessible to the consumer.

Furthermore, the administrative body held, the trader may not deny the consumer's rights to: - obtain products and services of good quality, - submit a complaint, - damages, information, protection of his own health, safety and economic interests, - submit motions and complaints to supervisory and inspection authorities and to the municipality in the event of breach of the consumer's statutory rights, - protection against unacceptable conditions in consumer contracts.

According to the administrative body, the commercial practice of the defendant represented a breach of the trader's obligations as stipulated in the Consumer Protection Code.

Celé znenie: [Celé znenie](#)

Súvisiace veci

Nie sú k dispozícii žiadne výsledky

Právna náuka

Nie sú k dispozícii žiadne výsledky

Výsledok

The administrative body imposed a fine of € 600 upon the defendant.