

Case law

Case Details

National ID: Decision no. DDK 1/2012

Member State: Poland

Common Name: link

Decision type: Administrative decision, first degree

Decision date: 12/01/2012

Court: The Office of Competition and Consumer Protection

Subject:

Plaintiff: The President of the Office of Competition and Consumer Protection

Defendant: International Masters Publishers sp. z o.o. with its registered office in Warsaw

Keywords: false impression, games of chance, limited availability, precontractual information, prize promotion, prizes

Directive Articles

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

Headnote

It is an unfair commercial practice to include in advertisement materials used by a trader, information suggesting that obtaining additional benefits following conclusion of a transaction is dependent on fortuitous events whereas obtaining such benefits is guaranteed and results directly from conclusion of a transaction.

Facts

The defendant is a company whose activity comprises selling collections of cards in subscription to consumers.

The company's advertising campaigns are aimed at encouraging the consumers to place orders for such collections. The company sends advertising materials to the potential consumers who then have the possibility to place an order, which was equivalent to concluding of a contract for an undetermined period of time and thereby agreeing to be sent further cards in the future. The consumer's only option to terminate the contract was to send back an unpacked package.

Also, one of the elements of the advertising campaign of the company was that each consumer who placed an order was to obtain an additional benefit, a "Great Welcome Package" containing presents. The advertising materials contained information suggesting that the contents of the "Great Welcome Package" were dependent on scratch cards or stickers contained in the advertising material.

In one of the company's advertising campaigns the consumers were offered to participate in a lottery, where "111 first participants were guaranteed to win a home cinema" or/and "111 first participants were guaranteed to win LCD television" on condition that they place an order - the earlier, the better chance of winning.

Legal issue

The President found all the above practices to be commercial practices harming consumers' economic interests.

The use of untrue suggestions regarding the contents of the additional benefits in order to encourage the consumer to conclude the contract was ruled to be a misleading action, likely to cause the consumer to take a transactional decision that he would not have taken otherwise.

Moreover, the President found that not informing the consumers about the size of the offered collections constituted misleading omission to provide information about the material properties of the transaction and subject thereof.

The use of slogans "111 first participants guaranteed to win a home cinema" or/and "111 first participants guaranteed to win a LCD television" in advertising campaigns was found to be a misleading action as regards the number of the prizes available to the consumers.

Finally, the President decided that a lack of information on the advertising campaigns "111 first participants were guaranteed to win a home cinema" and "111 first participants were guaranteed to win LCD television" was a misleading omission as it did not allow the consumer to make a decision on concluding a contract with the company with sufficient information to do so.

Decision

Is it an unfair commercial practice to include in advertisement materials used by a trader, information suggesting that obtaining additional benefits following conclusion of a transaction is dependent on fortuitous events whereas obtaining such benefits is guaranteed and results directly from conclusion of a transaction?

URL: http://decyzje.uokik.gov.pl/dec_prez.nsf/0/8972C440FC7E8325C1257A40003FBD07?OpenDocument

Full text: [Full text](#)

Related Cases

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Result

The commercial practice was found to be unfair.

The President ordered to stop using the contested practice.

The President imposed on the defendant a financial penalty paid to the state budget, in the amount of PLN 114,382.90.