

Νομολογία

Στοιχεία της υπόθεσης

Εθνικός αναγνωριστικός αριθμός: Recourse 2016/17 (AP)

Κράτος μέλος: Κύπρος

Κοινή ονομασία: N/A

Είδος απόφασης: Πρωτοβάθμια διοικητική απόφαση

Ημερομηνία απόφασης: 10/11/2016

Δικαστήριο: Υπηρεσία Ανταγωνισμού και Προστασίας Καταναλωτή

Θέμα:

Ενάγων: Competition and Consumer Protection Service

Εναγόμενος: Power Publishing Ltd

Λέξεις-κλειδιά: age, average consumer, children, confusing marketing, deceiving commercial practice, misleading advertising, nudity, packaging, unfair commercial practices, vulnerable consumer

Άρθρα της οδηγίας

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 5](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(b\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(c\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(d\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(e\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(f\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(g\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 2](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6](#)

Περίληψη

- (1) Using a product's packaging to provide false information in order to mislead a consumer into buying a product is an unfair commercial practice.
- (2) Using a product's packaging to hide true information in order to mislead a consumer into buying a product is an unfair commercial practice.
- (3) Targeting a vulnerable section of consumers, like children, is an aggravating factor in the assessment of the penalty.

Πραγματικά περιστατικά

The Office of the Commissioner for Children's Rights received complaints from consumers, according to which, they bought from bookstores children's books of the "I Learn Through Drawing" series, belonging to the defendant, which were packed in a clear plastic container which also contained 1 DVD for free. According to the consumers, the DVD was placed in the container, in a way that the consumer could only see its one side and on which cartoon films were advertised as contained in that DVD. The consumers reported that when they bought the container, having later opened it, they noticed that on the back side of the DVD, which was not visible to the consumer whilst the DVD was sealed in the plastic container with the children's book, it was written that the DVD also contained a documentary film titled "Shri Lanka, The Dancers of the Devil" and "Indonesia, Borneo, Head Hunters", which was deemed inappropriate for children under the age of 10-12 years old. The consumers contended that if they knew at the time of purchase that the DVD contained, apart from cartoon films, the said documentaries, they would not have proceeded with the purchase of the container. The Office of the Commissioner for Children's Rights conducted a research and found that the documentaries were indeed inappropriate for children under the ages of 10-12 years old, and therefore asked the Competition and Consumer Protection Service (the "Service") to examine the complaints in accordance with the Directive 2005/29/EC (implemented into the national Unfair Commercial Practices From Business to Consumers Law 103(I)/2007). The Service requested from the defendant to provide further information, however, despite the various attempts of the Service, the defendant failed to provide any information.

Νομικό ζήτημα

- (1) Is using a product's packaging to provide false information in order to mislead a consumer into buying a product, an unfair commercial practice?
- (2) Is using a product's packaging to hide true information in order to mislead a consumer into buying a product, an unfair commercial practice?
- (3) Is targeting a vulnerable section of consumers like children an aggravating factor in the assessment of the penalty?

Απόφαση

(1) The court found a violation of article 6 Directive 2005/29/EC (implemented into national law by article 5 of the Unfair Business-to-Consumer Commercial Practices Law 103(I)/2007) by the defendant Company, since the appearance of the packaging of the children's book of the series "I Learn Through Drawing", through the way with which the DVD was placed in such packaging, gave the impression to the average consumer that the nature of the content of the included DVD was exclusively for children, when it was not. In this way the defendant company used DVDs whose nature and content was not exclusively for children to promote its product, since the inclusion of a children's DVD in children's books is considered as an additional motive for the consumer to buy the said product for his or her child.

(2) The court also found a violation of article 7 of Directive 2005/29/EC (implemented into Cypriot law by article 6 of the Unfair Commercial Practices From Business to Consumers Law 103(I)/2007) by the defendant, taking into account that the manner in which the DVD was placed in the plastic container of the children's book presented only the one side of the DVD giving the impression to the average consumer that the content of the DVD was exclusively and only for children, whilst concealing the information that existed on the other side of the DVD in which reference was made to the documentary contained in the DVD. This caused or was likely to have caused consumers to have taken a transactional decision which they would not otherwise have taken, had they been given information about the full content of the DVD and with this commercial practice the defendant promoted its product.

(3) In the case in hand, the following adds up to the seriousness of the violation:

- That the unfair commercial practice was aimed not only at consumers who deal with children, but at children themselves, since the attractive appearance of the side of the DVD on which cartoons were shown, was possible to cause children that were with their parents in the shop to ask from their parents the purchase the said product.
- That the content of the documentaries in the DVDs, in some cases, was not only not for children, but also inappropriate for children.
- That there was intention on the part of the defendant since this is not a one-off event due to some mistake or omission, but three different DVDs with

different cartoon films on the one side and different documentaries on the other side were found following the Service's research, and they were all packaged in the same manner, so as to give the impression to the average consumer that the content of the DVD was exclusively and solely for children.

URL: [http://www.mcit.gov.cy/mcit/cyco/cyconsumer.nsf/All/A54BA4379E085EB2C225806C0031C85A/\\$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%2017-2016-%20Power%20Publishing.pdf?OpenElement](http://www.mcit.gov.cy/mcit/cyco/cyconsumer.nsf/All/A54BA4379E085EB2C225806C0031C85A/$file/%CE%91%CF%80%CF%8C%CF%86%CE%B1%CF%83%CE%B7%2017-2016-%20Power%20Publishing.pdf?OpenElement)

Πλήρες κείμενο: [Πλήρες κείμενο](#)

Συναφείς υποθέσεις

Δεν υπάρχουν αποτελέσματα

Νομική βιβλιογραφία

Δεν υπάρχουν αποτελέσματα

Αποτέλεσμα

An administrative fine of €10.000 (ten thousand euro) was imposed on the defendant.