

Case Details

Case Details

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| National ID | 2015/131 |
| Jäsenvaltio | Suomi |
| Common Name | MAO:829/15 |
| Decision type | Court decision, first degree |
| Decision date | 24/11/2015 |
| Tuomioistuin | Markkinaoikeus |
| Aihe | |
| Kantaja | Consumer Ombudsman |
| Vastaaja | XXL Sports & Outdoor Oy |
| Avainsanat | false information, misleading actions, misleading advertising, recommended retail pricing |

Directive Articles

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

Headnote

First, the commitment concerning a price differential payment is not considered as misleading marketing, neither in the part of the impression of the most affordable prices on the market nor the impression of the availability of the products.

Second, comparison between the selling price and the recommended retail price is considered as misleading marketing.

Third, the statement in question is false, when the product is offered only for a short period of time at the discounted price, when the same product is offered at the same price within a few days after the said period of time.

Facts

The plaintiff first demanded that the defendant shall be prohibited on pain of a fine in its marketing from presenting a commitment concerning a price differential payment, which gives a misleading impression, when unsubstantiated, about the most affordable products on the market to consumers. Furthermore, it gives a misleading impression that the products marketed by the defendant are also available in other competing stores. The defendant had not reliably proved that the products were actually the most affordable products on the market. In reality, only 60 per cent of the products marketed by the defendant were available in other stores.

Second, the plaintiff demanded that the defendant shall be prohibited from comparing its selling price to the recommended retail price provided by the importer, because this gives a misleading impression about the most affordable price provided by the defendant on the market. The products have actually been marketed for a long period of time at the same price on the market and, therefore, the discount is not real.

Third, the plaintiff demanded that the defendant shall not be allowed to present a false statement to the extent that

the product on sale is offered only for a short period of time at the discounted price, when in reality the same product is offered at the same price after a few days from the said period.

Legal issue

First, does the commitment concerning a price differential payment mislead consumers into having an impression of the most affordable prices on the market and whether those products are available in other stores?

Second, should the comparison between the selling price and the recommended retail price be considered as a misleading marketing?

Third, was the statement in question false, when the product on sale was marketed as being offered at the discounted price only for a short period of time, when in reality the same product was offered at the same price only a few days after the said period of time?

Ratkaisu

In general, a consumer must be considered as an observant and careful average consumer as intended in the law of the European Union.

Regarding the first demand, the consumer should not make decisions based only on the headlines used in marketing. Therefore, the average consumer cannot understand the price commitment by the defendant as a price statement but as an objective to offer the most affordable price on the market. Furthermore, the variety of products is extensive and the products might differ from each other even slightly. The price commitment cannot give an impression that the products offered by the defendant are always available in other stores. Therefore, the commitment concerning the price differential payment cannot be found as an unfair practice as intended in chapter 2 sections 3 and 6 of the Consumer Protection Act.

Regarding the second demand, based on experiences in the Member States of the European Union, misleading price comparison must be assessed on the grounds of whether the recommended retail price is equivalent to the general selling price or whether it has already been used for a longer period of time on the market. According to evidence, selling prices are usually lower than retail prices based on which the practice is against chapter 2 section 6 subsection 2 point 3 of the Consumer Protection Act.

Regarding the third demand, the offers in question have been repeated in part for the same products and, therefore, the marketing concerning the statements has been false from the view point of consumers in accordance with section 1 point 6 of the Government's Decree on Unfair Practice in Marketing and Customer Relations.

URL: <http://www.markkinaoikeus.fi/fi/index/paatokset/markkinaoikeudellisetasiat/markkinaoikeudellisetasiat/1448449155920.html>

Full Text: [Full Text](#)

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Result

The Market Court dismissed the first demand. However, with regards to the second and third demand, the defendant was prohibited from continuing such marketing under a penalty payment of 100,000 Euro in case of non-compliance.