

Case law

Case Details

National ID: Case P/0078/04/16

Member State: Slovakia

Common Name: link

Decision type: Administrative decision, first degree

Decision date: 23/05/2016

Court: The Inspectorate of the Slovak Trade Inspection with the seat in Nitra for the Nitra region

Subject:

Plaintiff: N/A

Defendant: OBI Slovakia s.r.o.

Keywords: consumer, consumer rights, misleading statements, unfair terms

Directive Articles

Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(c\)](#) Unfair Commercial Practices Directive, [Chapter 1, Article 2, \(d\)](#) Unfair Commercial Practices Directive, [Chapter 1, Article 3, 1.](#)

Headnote

(1) Directive 2005/29/EC is applicable to unfair business-to-consumer commercial practices prior to a commercial transaction in relation to a product.

(2) A commercial practice is considered unfair, if it is contrary to the requirements of professional diligence or if it materially distorts or may materially distort the economic behavior of the average consumer with regard to the product or to the service whom it reaches or whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

(3) A commercial practice shall be regarded as misleading if it misleads the consumer in relation to the availability of the product.

Facts

The defendant is a legal entity performing business activities in the field of commerce, services and manufacture.

The Inspectorate of the Slovak Trade Inspection claimed that the defendant breached the prohibition of unfair commercial practices.

On 24 March 2016, the inspectors of the Inspectorate of the Slovak Trade Inspection performed an inspection in the defendant's business premises. Based on the inspection carried out by the Inspectorate, it was inspected that the defendant maintained misleading information in a form of sales leaflets from 16 March 2016 to 27 March 2016 that were describing the offer for sale of 4 types of products. The inspection revealed that these products were supplied for operation on the date of the sales. The operation deputy who was present at the inspection did not dispute the results of the inspection in any way.

Based on the above, the notice on the initiation of the administrative procedure was sent to the defendant. The defendant has not challenged the findings with respect to the sales leaflets, apologized and said that the mistake occurred due to poor communication within the company while entering the Slovak market as well as due to delayed delivery of goods from the suppliers. The defendant stated that it will ensure that similar errors will not occur in the future.

Legal issue

The Inspectorate of the Slovak Trade Inspection decided to impose a fine to the defendant in the amount of EUR 1,000 for the infringement of the prohibition of unfair commercial practices.

The Inspectorate of the Slovak Trade Inspection decided that the defendant did not introduce new facts and evidence which would release the defendant from liability for infringing the law.

The Inspectorate of the Slovak Trade Inspection also concluded that unlawfulness of the actions in the case at hand was reliably established.

The defendant used an unfair commercial practice, which the law prohibits and which could negatively impact the consumer and ultimately can result in damaging his economic interests. The administrative body also considered the fact that the use of unfair commercial practices represents a serious harm to the consumer rights protected by law (Act No. 250/2007 Coll. on Consumer Protection, as amended and the Directive 2005/29/EC).

The consumer has the right to be correctly, accurately and comprehensively informed about all factors that affect his decision to buy the product. In the Slovak market conditions, one of such factors is the availability of the product.

The Inspectorate of the Slovak Trade Inspection considered that the fine imposed at the lower limit of the statutory rate is appropriate with regard to its repressive and educational function and is corresponding to the unlawful conduct and the nature of the infringement.

Decision

(1) Is Directive 2005/29/EC applicable to unfair business-to-consumer commercial practices taking place before a commercial transaction in relation to a product?

(2) When is a commercial practice regarded as an unfair commercial practice?

(3) Shall a commercial practice be regarded as misleading, when it misleads the consumer in relation to the availability of the product?

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Result

The defendant was imposed with a fine in the amount of EUR 1.000.