

## Case law

### Case Details

**National ID:** A-442-23/2014

**Member State:** Lithuania

**Common Name:** link

**Decision type:** Court decision in appeal

**Decision date:** 20/06/2014

**Court:** Supreme Administrative Court of Lithuania

**Subject:**

**Plaintiff:** UAB "4finance"

**Defendant:** State Consumer Rights Protection Authority and State Tax Inspectorate

**Keywords:** black list, internet, pyramid scheme, unfair commercial practices

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 1](#). Unfair Commercial Practices Directive, [Annex I, 14](#).

### Headnote

A promotional scheme cannot constitute an unfair commercial practice, where such a scheme requires the consumer to give financial consideration for the opportunity to receive compensation that is derived primarily from the sale or consumption of products rather than from the introduction of other consumers into the scheme.

### Facts

The plaintiff was a fast-credit company. The plaintiff from 2010-10-26 to 2011-02-15 ran an advertising campaign "Premium litas", under which its customers were offered a bonus of LTL 20 for every new client they recruited. In order to become the plaintiff's client, the new client had to pay a registration fee of LTL 0.01.

The defendant adopted a decision, in which it found that the plaintiff's actions are considered to be a pyramid scheme and imposed a fine on the plaintiff. The plaintiff applied to the court and requested annulment of the defendant's decision.

### Legal issue

The court firstly compared Article 14 of Annex I of the Directive 2005/29/EC in different languages. Under the Lithuanian version of Article 14 of Annex I of the Directive 2005/29/EC (implemented into Lithuanian law by Article 7(22) of the Law on Prohibition of Unfair Business-to-Consumer Commercial Practices) the consideration, given by the consumer, for a possibility to participate in a pyramid scheme is not a mandatory condition for this particular unfair commercial practice. However, under the English language version of the directive, such a consideration, given by the consumer, is a mandatory condition.

Taking into account the above, the court expressed doubts: (1) whether such a condition on consideration given by a consumer is mandatory, (2) whether any sum, regardless of the amount, must be regarded as consideration and (3) whether classification as a pyramid promotional scheme requires it to be established that the compensation a consumer can receive is financed, partly or primarily, by the consideration given subsequently by other consumers.

The court referred to the CJEU for a preliminary ruling, related to interpretation of Directive 2005/29/EC. Case number C515/12 was assigned in these proceedings before the CJEU.

After the CJEU adopted its judgement, the national court, based on the guidance of the CJEU, came to a conclusion that prohibition of pyramid promotional schemes is based on three common conditions. Firstly, such a promotion is based on the promise that the consumer will have the opportunity of making a commercial profit. Secondly, the realisation of that promise depends on the introduction of other consumers into the scheme. Thirdly, the greater part of the revenue to fund the compensation promised to consumers does not result from a real economic activity.

In this case, under the promotional scheme system established by the plaintiff, the bonuses paid to existing members (LTL 20) were funded only to a very small extent (0.05 %) by the financial consideration required from new members (LTL 0.01). In such a scheme, the second condition is not met, i.e. commercial profit of the existing members does not depend on the introduction of new members into the scheme. The court then concluded that the scheme established by the plaintiff cannot be considered as an unfair commercial practice.

### Decision

Can a promotional scheme constitute an unfair commercial practice, where such a scheme requires the consumer to give financial consideration for the opportunity to receive compensation that is derived primarily from the sale or consumption of products rather than from the introduction of other consumers into the scheme?

URL: [http://www.lvat.lt/download/1750/a-442-23-2014%20\(uab%204finance%20vs%20%20valstybin%C4%97%20vartotoj%C5%B3%20teisi%C5%B3%20apsaugos%20tarmyba\)\\_nuasmeninta%20\(2\).pdf](http://www.lvat.lt/download/1750/a-442-23-2014%20(uab%204finance%20vs%20%20valstybin%C4%97%20vartotoj%C5%B3%20teisi%C5%B3%20apsaugos%20tarmyba)_nuasmeninta%20(2).pdf)

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### Related Cases

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**Member State:** European Union

**National ID:** Case C515/12

**Common Name:** link

**Directive Articles:** Unfair Commercial Practices Directive, [Whereas, \(8\)](#) Unfair Commercial Practices Directive, [Whereas, \(9\)](#) Unfair Commercial Practices Directive, [Whereas, \(11\)](#) Unfair Commercial Practices Directive, [Whereas, \(17\)](#) Unfair Commercial Practices Directive, [Annex I, 14](#).

**Decision Date:** 03/04/2014

**Legal Literature**

No results available

**Result**

The court upheld the plaintiff's claim.