

## Case law

### Case Details

**National ID:** 5Sžo/21/2014

**Member State:** Slovakia

**Common Name:** link

**Decision type:** Supreme court decision

**Decision date:** 27/01/2015

**Court:** The Supreme Court of the Slovak Republic

**Subject:**

**Plaintiff:** Unknown

**Defendant:** Ústredný inšpektorát Slovenskej obchodnej inšpekcie

**Keywords:** advertisement, advertising, consumer, consumer rights, goods

### Directive Articles

Misleading and Comparative Advertising Directive, [Article 2, \(a\)](#) Misleading and Comparative Advertising Directive, [Article 5, 1.](#) Misleading and Comparative Advertising Directive, [Article 5, 6.](#)

### Headnote

(1) The Act No. 147/2001 Coll. on advertising, as amended, does not allow to advertise the products, the sale of which is prohibited by other laws.

(2) The sale of electronic cigarettes delivered via email is considered a violation of the provisions of Act No. 377/2004 Coll. on protection of non - smokers, as amended.

(3) When selling electronic cigarettes, it is not decisive whether such product is sold with or without the nicotine liquid.

### Facts

The plaintiff requested the court to dismiss the judgment of the regional court that confirmed the decision of the Inspectorate of the Slovak Trade Inspection with the seat in Žilina for the Žilina region.

The Inspectorate of the Slovak Trade Inspection with the seat in Žilina for the Žilina region imposed a fine in the amount of EUR 340 on the plaintiff. The plaintiff infringed general advertising requirements, as it was selling products - electronic cigarettes delivered via mail on its website [www.zdravšia-cigareta.sk](http://www.zdravšia-cigareta.sk), which is prohibited by Act on protection of non-smokers.

The regional court agreed with the findings of the Inspectorate of the Slovak Trade Inspection. More specifically, the regional court has dealt with the plaintiff's arguments. These arguments were evaluated by the court as unjustified. The regional court decided that harmful conduct of the plaintiff identified by the administrative authority was duly demonstrated, and that the plaintiff is objectively responsible for breach.

The plaintiff appealed the judgment of the regional court and claimed that this judgment had defects, which caused the judgment to be erroneous.

### Legal issue

The court stated that it did not find any defect in the proceeding of the administrative authority, which could affect the legitimacy of the contested decision of this administrative authority. The court considered the plaintiff's objections as unfounded and confirmed the judgment of the regional court.

### Decision

(1) Is it allowed under Act No. 147/2001 Coll. on advertising, as amended, to advertise the products, the sale of which is prohibited by other laws?

(2) Is the sale of electronic cigarettes and their delivery via mail considered as violation of the provisions of Act No. 377/2004 Coll. on protection of non - smokers, as amended?

(3) When selling electronic cigarettes, is it important whether such product is sold with or without the nicotine liquid?

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### Related Cases

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### Legal Literature

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### Result

The court confirmed the judgment of the regional court and dismissed the plaintiff's claim.