

Case Details

Case Details

National ID	10Sžo/123/2015
Member State	Slovakia
Common Name	link
Decision type	Supreme court decision
Decision date	28/09/2016
Court	The Supreme Court of the Slovak Republic
Subject	
Plaintiff	Consumer Finance Holding, a.s.
Defendant	Slovenská obchodná inšpekcia
Keywords	administrative authority, advertisement, advertising, consumer, consumer rights

Directive Articles

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

Headnote

(1) The fact that the recipient of an email is a business partner of the sender does not preclude a court or an administrative body from the possibility to assess whether such an email is an advertisement sent without the consent of the receiving party, which is forbidden under Act No. 147/2001 Coll. on advertising, as amended.

(2) The fact that an email correspondence is between business partners does not preclude the administrative body from investigating unlawful advertising.

Facts

The plaintiff, a legal entity, requested the court to dismiss the judgment of the court of first instance that ruled on the decisions of the administrative body, which is in the position of the Defendant in this case at hand.

The administrative body decided on the plaintiff's advertising itself as the company via electronic means, more precisely sending an unsolicited email with advertising to one of its business partners with whom it had a cooperation agreement.

The court of first instance agreed with the findings in the decision of the administrative body. More specifically, it confirmed that there was a lack of consent from the receiving party. This was confirmed after analysis of the cooperation agreement, administrative documents and any other factual matter.

The plaintiff further disagreed with the jurisdiction of the administrative body to decide on such issues. This was also dismissed by the court of first instance because the administrative body has the jurisdiction to decide on such issues as this jurisdiction stems from Section 10 (e) of Act No. 147/2001 Coll. on advertising, as amended (implemented from Article 5 (2) of the Directive 2006/114/EC).

The plaintiff appealed against the judgment of the court of first instance and claimed that this was not advertising because the company which received the email was not a consumer, it was a business partner.

Moreover, the plaintiff, inter alia, again contested the jurisdiction of the administrative body due to the nature of the electronic correspondence, which is among two business partners and claimed that it did not fall under the competence of the administrative body.

Legal issue

The court decided that the plaintiff did not raise fundamentally different objections in comparison to those already raised in the course of the previous proceedings which led to this appellate proceeding. Therefore, it did not provide a complex analysis of the claims raised by the plaintiff since it believed that the lower court provided a sufficient and correct reasoning for the claims raised.

Decision

(1) Does the fact that the recipient of an email is a business partner of the sender preclude a court or an administrative body from the possibility to assess whether such email is an advertisement sent without the consent of the receiving party, which is forbidden under Act No. 147/2001 Coll. on advertising, as amended?

(2) Is the fact that email correspondence is between business partners preclude the administrative body from investigating the claim of unlawful advertising?

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Result

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