

Case law

Case Details

National ID: A-858-1702/2010

Member State: Lithuania

Common Name: link

Decision type: Administrative decision in appeal

Decision date: 03/01/2011

Court: Supreme Administrative Court of Lithuania

Subject:

Plaintiff: UAB "Saulėgrąžų vaistinė"

Defendant: Competition Council of the Republic of Lithuania

Keywords: discounts, medicinal products, misleading advertising, special offer, time-limited promotions

Directive Articles

Misleading and Comparative Advertising Directive, [Article 3](#)

Headnote

A pharmaceuticals advertising, stating about the price reduction for reimbursable medicines during the specified "happy hours" is considered as misleading advertising, if in fact some of the reimbursable medicines are marketed with 0 percent discount.

Facts

The plaintiff both in its commercial posters and advertising on the radio disseminated the following statements (in Lithuanian): "Happy hours at all "Litfarma" pharmacies on weekdays from 2 pm till 4 pm! Up to 100 percent discount on co-payment of reimbursable medicines and 15 percent discount on all non-reimbursable goods". However, some of the reimbursable medicines were in fact marketed with a regular price (with 0 percent discount).

The defendant adopted a decision, in which it identified the above-mentioned statements as misleading advertising on the account that not all reimbursable medicines were marketed with (even a minimal) discount and imposed a fine on the plaintiff. The plaintiff disagreed with this decision and filed a claim to the court, requesting annulment of the defendant's decision.

Legal issue

The court stated that advertising can be regarded as misleading as referred to in Article 3(a) of Directive 2006/114/EC (implemented into Lithuanian law by Article 5(5)(2) of the Law on Advertising) when the information provided in the advertising is vague, ambiguous or the essential information required to make the decision about the transaction to an average consumer is not provided in time.

If the above-mentioned advertising could be seen as implying a right for the plaintiff to apply 0 percent discount on some reimbursable medicines, it would create an unjustifiable situation allowing the plaintiff to abuse its rights by alluring the customers to come to the plaintiff's pharmacies and not apply any discounts at all. Since the advertising contained statements about discounts on a certain group of goods (reimbursable medicines) and not contained any exemptions from such statement, an average consumer could have reasonably understood that discounts were applied for all goods in that specified group (reimbursable medicines).

Taking the above into consideration, the court confirmed that the plaintiff's advertising was misleading, as not all reimbursable medicines were marketed with the discount during the "happy hours".

Decision

Is the pharmaceuticals advertising, stating about the price reduction for reimbursable medicines during the specified "happy hours", considered as misleading advertising, if in fact some of the reimbursable medicines are marketed with 0 percent discount?

URL: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=94ed15a0-ff01-463f-b1b8-c7df0c0b32c8>

Full text: [Full text](#)

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Result

The court rejected the plaintiff's claim.