Case law

Case Details

National ID: A420588512

Member State: Latvia

Common Name:link

Decision type: Court decision in appeal

Decision date: 10/03/2015

Court: Regional Court of Administrative Cases

Subject:

Plaintiff: AS „Air Baltic Corporation"

Defendant: Consumer Rights Protection Centre

Keywords: Air Services Regulation, good faith, imbalance between the rights of the parties, unfair terms, unwanted solicitations

Directive Articles

Unfair Commercial Practices Directive, Chapter 1, Article 2, (k) Unfair Commercial Practices Directive, Chapter 2, Article 5, 2. Unfair Contract Terms Directive, Article 3, 1. Consumer Rights Directive, Chapter 4, Article 22

Headnote

A contractual term in online purchase contract is unfair, if a pre-selected choice of services is made on behalf of consumers.

Facts

The plaintiff was selling airline tickets on its website. During the online purchasing steps several additional services/choices were automatically chosen/made for consumers via pre-ticked boxes. For example, the option "Luggage", which enabled consumers to take on board additional luggage for the price of EUR 20 was already pre-ticked and billable to consumers unless specifically un-ticked by them. Among other findings, the defendant found such practice to infringe price indication requirements for air services (laid out in Regulation 1008/2008/EC).The defendant also held the particular contractual terms to be unfair according to Article 6(3) of the Consumer Rights Protection law (which implements Article 3(1) of Directive 93/13/EEC). Thus, the defendant adopted a decision requesting the plaintiff to pay a fine and to cease the unfair commercial practices.

The plaintiff brought a claim before the court, requesting to revoke the defendant's decision in the part that ordered to cease the unfair commercial practice regarding the pre-selected "Luggage" option.

Legal issue

The court stated that by automatically making a choice on behalf of consumers, a situation may arise where a consumer accepts a pre-selected service without evaluating if he/she actually needs the particular service. As a result, a consumer would not have clearly expressed his/her will to purchase the particular service.

The court considered such contractual terms to be contrary to good faith and to cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of consumers. Accordingly, the court found such contractual terms to be unfair. The court also found the inclusion of such terms to constitute unfair commercial practice, because it was contrary to the requirements of professional diligence and was likely to distort the economic behaviour of the consumer.

Decision

Is a contractual term in online purchase contract unfair, if a pre-selected choice of services is made on behalf of consumers?

URL: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/206129.pdf

Full text: Full text

Related Cases

Sorted by Member StateNational IDCommon NameDirective ArticlesDecision Date ▼

Member State: Latvia

National ID: Consumer Rights Protection Centre Decision No. E03-PTU-K115-39

Common Name: link

Directive Articles: Unfair Commercial Practices Directive, Chapter 1, Article 2, (b) Unfair Commercial Practices Directive, Chapter 1, Article 2, (d) Unfair Commercial Practices Directive, Chapter 1, Article 2, (e) Unfair Commercial Practices Directive, Chapter 1, Article 2, (h) Unfair Commercial Practices Directive, Chapter 1, Article 2, (k) Unfair Commercial Practices Directive, Chapter 2, Article 5, 1. Unfair Commercial Practices Directive, Chapter 2, Article 5, 2., (b) Unfair Commercial Practices Directive, Chapter 2, Article 5, 4., (b) Unfair Commercial Practices Directive, Chapter 2, Section 2, Article 8 Unfair Commercial Practices Directive, Chapter 2, Section 2, Article 9, (a) Unfair Commercial Practices Directive, Chapter 2, Section 2, Article 9, (d)

Decision Date: 23/10/2012

Legal Literature

No results available

Result

The court dismissed the plaintiff's request to revoke the defendant's decision in the part that ordered to cease the unfair commercial practice regarding the pre-selected "Luggage" option.