

Case law

Case Details

National ID: C33404611

Member State: Latvia

Common Name: link

Decision type: Administrative decision in appeal

Decision date: 30/09/2015

Court: Department of Civil Cases of the Supreme Court of the Republic of Latvia

Subject:

Plaintiff: Unknown

Defendant: SIA „AddCar rental”

Keywords: right of cancellation, right of withdrawal

Directive Articles

Distance Selling Directive, [Article 7, 2.](#)

Headnote

A service provider's obligation to inform a consumer regarding the inability to perform a service is fulfilled even in a situation, where the e-mail informing of cancellation of the service is automatically redirected to a spam folder in the consumer's email.

Facts

Plaintiffs via a car rental website of the defendant ordered a service - car lease for two days. The defendant sent a confirmation e-mail to one of the plaintiffs regarding the car rental. However, once the plaintiffs arrived to receive the leased car, they were informed by the defendant that no cars are available and that the defendant was therefore unable to provide the car leasing service. The defendant further informed the plaintiffs that a cancellation e-mail was sent to one of the plaintiff's e-mail address. It was later established that indeed 19 minutes after sending the confirmation email, the defendant had sent a cancellation e-mail to one of the plaintiffs, however, this cancellation e-mail was directly forwarded to the spam folder and the plaintiff thus did not get to read it in time.

Legal issue

The court first stated that it is important to draw a distinction between the right of withdrawal and the impossibility to perform the contractual duties in special circumstances. The right of withdrawal stipulated by Article 12 of the Consumer Rights Protection Law (Article 5 of the Directive 85/577/EEC) applies only to situations, where a customer withdraws from a contract. The court then observed that according to Article 16 of the Cabinet of Ministers Regulation No 207 On Distance Contracts, which implements Article 7(2) of the Directive 97/7EC, a service provider is obliged to inform a consumer in a situation, where the service provider is unable to provide the ordered service, within 30 days after the service provider has received consumer's order. Thus, the court concluded that there may arise situations, where a service provider for objective reasons is not able to deliver the ordered service and in such situation he must inform the consumer and repay the payments received from the consumer. Then the court evaluated the facts of the case in light of the foregoing conclusions and concluded that by sending a cancellation e-mail to the plaintiffs the defendant complied with the requirement to inform a consumer. The fact that this e-mail was automatically re-directed to a plaintiff's spam folder does not change the fact that the plaintiffs were duly informed by the defendant.

Decision

Is a service provider's obligation to inform a consumer regarding the inability to perform a service fulfilled, if the e-mail informing of cancellation of the service is automatically redirected to a spam folder in the consumer's email?

URL: <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/233018.pdf>

Full text: [Full text](#)

Related Cases

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Legal Literature

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Result

The court overturned the previous decision of the court of appeal and submitted the case for a new hearing in the court of appeal.