

Case law

Case Details

National ID: XVII AmA 3/14

Member State: Poland

Common Name: link

Decision type: Other

Decision date: 11/09/2015

Court: District Court in Warsaw - Court for the Protection of Competition and Consumers

Subject:

Plaintiff: M.P in B.

Defendant: President of the Office of Competition and Consumer Protection

Keywords: deceiving commercial practice, scope of the Directive, unfair commercial practices

Directive Articles

Doorstep Selling Directive, [Article 1, 1.](#)

Headnote

A trader cannot invoke provisions of Directive 85/577/EEC as a legal basis for the conclusion of an agreement with a consumer when they are implemented by respective national provisions.

Facts

The Plaintiff used standard contracts and statement forms which were used while engaging new consumers to enter into a loan agreement. The statements granted by a consumer in relation to the conclusion of a loan agreement contained, inter alia, the information that those statements are made in conformity with Directive 85/577/EEC. The loan documentation was also regarded as contrary to respective regulations on consumer credit.

The President of the Office of Competition and Consumer Protection declared the Defendant's practices unlawful and, consequently, as infringing collective consumers interests.

Legal issue

According to the court, including an information that a given statement is made in conformity with Directive 85/577/EEC, where in fact the given act does not provide for such a statement, is an unfair commercial practice.

The provisions of Directive 85/577/EEC cannot be directly relied on in such a relationship, as Directive 85/577/EEC has been implemented into the Polish legal system by respective provisions of the Act of 2 March 2000 on Protection of Certain Consumer Rights and on Liability for Damage Caused by a Dangerous Product. Consequently, the rights conferred by Directive 85/577/EEC cannot be excluded by way of making a statement such as the one submitted in the proceedings, what the Plaintiff allegedly tried to achieve.

Another argument raised by the Court was that demanding a statement from the consumer on the basis of Directive 85/577/EEC could have misled the average consumer that more means of legal protection are available to him and therefore induce him to conclude a loan agreement with the Plaintiff.

Such conduct was declared unlawful and along with other practices described in the case, held as infringing collective consumer interests.

Decision

Can a trader invoke provisions of Directive 85/577/EEC as a legal basis for the conclusion of an agreement with a consumer?

URL: [http://orzeczenia.warszawa.so.gov.pl/content.pdf?file=/002fneurocourt002fpublished002f15\\$002f450500\\$002f0005127\\$002fAmA\\$002f2014\\$002f000003\\$002f154505000005127_XVII_AmA_000003_2014_Uz_09-11_003-publ.xml?t:ac=\\$N/154505000005127_XVII_AmA_000003_2014_Uz_2015-09-11_003](http://orzeczenia.warszawa.so.gov.pl/content.pdf?file=/002fneurocourt002fpublished002f15$002f450500$002f0005127$002fAmA$002f2014$002f000003$002f154505000005127_XVII_AmA_000003_2014_Uz_09-11_003-publ.xml?t:ac=$N/154505000005127_XVII_AmA_000003_2014_Uz_2015-09-11_003)

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Result

The District Court in Warsaw - Court for the Protection of Competition and Consumers upheld the contested decision in part.