

Official Gazette of the Republic of Slovenia No 53, 15.6.2007

NATIONAL ASSEMBLY

2826. Law on the Protection of Consumers against Unfair Commercial Practices (ZVPNPP)

On the basis of Article 107(1)(2) and Article 91(1) of the Constitution of the Republic of Slovenia, I hereby issue an

ORDER

promulgating the Law on the Protection of Consumers against Unfair Commercial Practices (ZVPNPP)

I hereby promulgate the Law on the Protection of Consumers against Unfair Commercial Practices (ZVPNPP), which was adopted by the National Assembly of the Republic of Slovenia at its session on 31 May 2007.

No 001-22-58/07
Ljubljana, 8 June 2007

Dr Janez Drnovšek
President
of the Republic of Slovenia

LAW

ON THE PROTECTION OF CONSUMERS AGAINST UNFAIR COMMERCIAL PRACTICES (ZVPNPP)

CHAPTER 1 GENERAL PROVISIONS

Article 1 (Content)

(1) This Law lays down the actions and omissions of enterprises that are considered to be unfair business-to-consumer commercial practices and regulates the administrative and judicial protection against unfair business-to-consumer commercial practices.

(2) This Law transposes into Slovenian national law Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 22).

Article 2 (Exclusion from the application of this Law)

(1) This Law shall be without prejudice to:

- the part of contractual law that governs the validity, conclusion and effects of contracts;
- provisions governing health protection and product safety;
- regulations governing the competence of courts;
- law governing criminal acts;
- any conditions of establishment or of authorisation regimes, or the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional.

(2) This Law shall be without prejudice to the application of regulations governing the certification and indication of the standard of fineness of articles of precious metal.

(3) This Law shall apply to unfair business-to-consumer commercial practices, except where another law governing special forms of unfair business-to-consumer commercial practices stipulates otherwise.

Article 3 (Definitions)

The terms used in this Law shall have the following meanings:

- “consumer” means any natural person who obtains or uses goods and services for purposes which are not linked to his profession or gainful activity;
- “business” means any legal or natural person that performs gainful activity, regardless of its/his legal and organisational form. The obligations of businesses under this Law shall also apply to public bodies and other legal persons and natural persons not engaged in gainful activity if they provide goods and services to consumers;
- “product” means any goods or services, including immoveable property, rights and obligations;
- “business-to-consumer commercial practices” means any act, omission, course of conduct, declaration or commercial communication of businesses, including advertising and marketing, directly connected with the promotion, sale or supply of a product to consumers;
- “material distortion of the economic behaviour of consumers” means using a commercial practice to appreciably limit the consumer’s ability to make an informed decision (decision on the basis of the information received), thereby causing the consumer to take a transactional decision that he would not have taken otherwise;
- “code of conduct” means an agreement or a set of rules not imposed by law, regulation or administrative provision which defines the behaviour of businesses that undertake to be bound by the code vis-à-vis consumers in relation to one or more commercial practices or business sectors;
- “code owner” means the legal or natural person, including a business or group of businesses, that is responsible for the formulation and revision of a code of conduct

and for monitoring compliance with the code by the businesses that have undertaken to be bound by it;

- “professional diligence” means the standard of special skill and care which a business may reasonably be expected to exercise towards consumers, in accordance with good business practices and the general principle of good faith in its field of activity;
- “invitation to purchase” means a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase;
- “undue influence” means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer’s ability to make an informed decision;
- “transactional decision” means any decision taken by a consumer concerning the questions of whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product or to exercise a contractual right in relation to the product, irrespective of whether the consumer decides to act or to refrain from acting;
- “regulated profession” means a professional activity or a group of professional activities, access to which or the pursuit of which, or one of the modes of pursuing which, is conditional, directly or indirectly, upon possession of specific professional qualifications pursuant to laws, regulations or administrative provisions.

CHAPTER 2 UNFAIR COMMERCIAL PRACTICES

Article 4 (Prohibition of unfair commercial practices)

(1) Unfair business-to-consumer commercial practices (hereinafter referred to as unfair commercial practices) shall be prohibited before, during and after a commercial transaction in relation to the purchase of a product.

(2) A commercial practice shall be unfair if it is contrary to the requirements of professional diligence and it materially distorts or is likely to materially distort the economic behaviour with regard to the product:

- of the average consumer whom it reaches or to whom it is addressed, or
- of the average member of the group, when a commercial practice is directed to a particular group of consumers.

(3) Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical illness, particular characteristics, age or credulity in a way in which the business could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to common advertising statements that contain obvious exaggerations if they are clearly identifiable as deliberate and obvious exaggerations for that group which are not meant to be taken literally.

(4) In particular, commercial practices shall be unfair if they are:

- misleading or
- aggressive.

Misleading commercial practices

Article 5 (Misleading actions)

(1) A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful. A commercial practice shall also be regarded as misleading if it, in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:

1. the existence or nature of the product;
2. the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
3. the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the enterprise or the product;
4. the price or the manner in which the price is calculated or the existence of a specific price advantage;
5. the need for a service, part, replacement or repair;
6. the nature, attributes and rights of the business or his agent, such as its/his identity and assets, qualifications, status, approval, affiliation or connection and ownership of intellectual property rights or its/his awards and distinctions;
7. the consumer's rights in accordance with the law on consumer protection, including the right to replacement or reimbursement, the guarantee, material faults and incorrectly provided services or other risks he may face.

(2) A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:

1. any marketing of a product, including comparative advertising, which creates confusion with any other products, trademarks, trade names or other distinguishing marks of a competitor;

2. failure to comply with the code by which the business has undertaken to be bound, where:

- the commitment is not aspirational but is firm and is capable of being verified, and
- the business indicates in a commercial practice that it is bound by the code.

Article 6
(Misleading omissions)

(1) A commercial practice shall be regarded as misleading if a business, in the factual context, taking account of all its features and circumstances and the limitations of the communication medium, omits material information that the average consumer needs, according to the actual circumstances, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

(2) It shall also be regarded as a misleading omission:

- when, taking account of the aspects described in the previous paragraph, a business hides, or provides in an unclear, unintelligible, ambiguous or untimely manner, such material information as referred to in the previous paragraph, or
- when a business fails to identify the commercial content of the commercial practice or if that is not apparent from its content and this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

(3) Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the business to make the information available to consumers by other means shall be taken into account in deciding whether this information has been omitted.

(4) In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from its content:

- the main characteristics of the product to an extent appropriate to the medium of communication and the product;
- the geographical address and the identity of the business, such as its name and, where applicable, the geographical address and the identity of the business on whose behalf it is acting;
- the price inclusive of taxes or, where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
- for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

(5) Information requirements established by consumer protection regulations, and regulations on securities, insurance and medicines in relation to commercial communication, including advertising or marketing, shall be regarded as material, provided that they are in keeping with Community law.

Article 7

(Misleading commercial practices which are in all circumstances considered unfair)

Misleading commercial practices are, above all, when a business:

1. claims to be a signatory to a code of conduct when it is not;
2. displays a trust mark, quality mark or equivalent without having obtained the necessary authorisation;
3. claims that the code of conduct has an endorsement from a public or other body which it does not have;
4. claims that it (including its commercial practices) meets the conditions to obtain the necessary authorisation or that it or a product has received the necessary authorisation from a public or other body when it has not;
5. makes an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds, on the basis of which:
 - it will not be possible to provide certain products or equivalent products at that price for a period that is, and in quantities that are, suitable having regard to the product, the scale of advertising of the product and the price offered, or
 - it will not be able to procure another business to supply the products under the conditions set out in the previous indent (bait advertising);
6. makes an invitation to purchase products at a specified price and then refuses to show the advertised item to consumers or refuses to take orders for it or to deliver it within a reasonable time or demonstrates a defective sample of it with the intention of promoting the sale of a different product (bait and switch technique);
7. falsely states that a product will only be available for a very limited time or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice;
8. undertakes to provide after-sales service to consumers with whom it has communicated prior to a transaction in a language which is not an official language of the Member State where the business is established and then makes such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction;
9. states or otherwise creates the impression that a product can legally be sold when it cannot;
10. presents rights given to consumers in law as a distinctive feature of the offer;

11. uses programme content in the media to promote a product and pays for such promotion itself without making that clear in the content or by images or sounds clearly identifiable by the consumer. This provision is without prejudice to the provisions of law on the media;
12. makes a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product;
13. presents a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not;
14. establishes, operates or promotes a pyramid promotional scheme where a consumer hopes for payment or compensation that is derived primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products;
15. claims that it is about to cease trading or move premises when it is not;
16. claims that products are able to facilitate winning in games of chance;
17. falsely claims that a product is able to cure illnesses, dysfunction of organs or infirmities;
18. passes on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions;
19. claims in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent;
20. describes a product as “gratis”, “free”, “without charge” or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice, such as the cost of collecting or paying for the delivery of the item;
21. includes in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not;
22. falsely claims or creates the impression that it is not acting for purposes relating to its trade, business, craft or profession, or falsely represents itself as a consumer;
23. creates the false impression that after-sales service in relation to a product is available in a Member State other than the one in which the product is sold.

Aggressive commercial practices

Article 8

(Aggressive commercial practices)

A commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly

impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.

Article 9

(Use of harassment, coercion and undue influence)

In determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of:

1. its timing, location, nature and persistence;
2. the use of threatening or abusive language or behaviour;
3. the exploitation of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the business is aware, to influence the consumer's decision with regard to the product;
4. any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate the contract or to switch to another product or another business;
5. any threat to take any action that cannot legally be taken.

Article 10

(Aggressive commercial practices which are in all circumstances considered unfair)

A commercial practice is considered aggressive if the business:

1. creates the impression that the consumer cannot leave the premises until a contract is formed;
2. conducts personal visits to the consumer's home, ignoring the consumer's requests to leave or not to return except in circumstances and to the extent justified under law to enforce a contractual obligation;
3. in order to obtain new customers, persistently harasses a consumer by telephone, fax, email or other remote media, without his agreement, except in circumstances and to the extent justified under law to enforce a contractual obligation. This does not concern distance contracts as defined by the law on consumer protection, the law on the protection of personal data and the law on electronic communications;
4. requires a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or fails systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights;
5. includes in an advertisement a direct exhortation to children to buy advertised products or to persuade their parents or other adults to buy advertised products for them. This provision does not apply to the provisions of the law on the media that govern the protection of children from unauthorised advertising;
6. demands immediate or deferred payment for, or the return or safekeeping of, products supplied by the business, but not solicited by the consumer. If a consumer

solicits goods or services and the business supplies him with goods or services of the same quality and price instead, and this was agreed in the contract or stipulated prior to the conclusion of the contract, it is not considered to be the supply of unsolicited goods or services. The consumer must be informed thereof in a clear and understandable manner and any costs arising from the return of the goods or services following the exercise of the right of withdrawal are to be covered by the enterprise;

7. expressly informs the consumer that if he does not buy the product or service a person's job or the continued existence of the business will be in jeopardy;

8. creates the false impression that the consumer has already won, will win, or will, on doing a particular act, win a prize or other equivalent benefit, when:

- there is no prize or other equivalent benefit, or
- taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

CHAPTER 3 CODE OWNER

Article 11 (Control and proceedings before the code owner)

(1) The code owner may monitor unfair commercial practices and, at the request of a State body, consumer organisation, consumer or at its own initiative, issue an opinion about whether a given business practice is unfair.

(2) A request to initiate proceedings before the code owner shall not be considered to be renunciation of the right to administrative and judicial protection.

CHAPTER 4 ADMINISTRATIVE CONTROL AND JUDICIAL PROTECTION

Article 12 (Administrative control)

(1) Administrative control of the implementation of this Law shall be the responsibility of the Market Inspectorate of the Republic of Slovenia and the other inspection bodies in accordance with their powers.

(2) If the Market Inspectorate or another competent inspection body finds that a business uses an unfair commercial practice or is just about to use one, it shall issue a decision banning the business from using such a practice if it considers that it could cause harm to consumers, irrespective of the form of guilt of the business.

Article 13 (Judicial protection)

A person with the legal capacity under the law governing consumer protection may bring legal action against a business that uses unfair business-to-consumer commercial practices on grounds of such conduct; such legal action shall be governed by the provisions on property law protection laid down in the law governing consumer protection.

Article 14
(Burden of proof)

(1) The court and the administrative body referred to in Article 12 of this Law may require an enterprise to submit proof, within a period not exceeding eight days, of the truth of contested statements in its commercial practice if such a request seems appropriate on the basis of the circumstances of the individual case and in the light of the legitimate interests of the business and all other parties in the proceedings.

(2) If a business does not present the proof referred to in the previous paragraph, or if it submits inadequate proof, the contested statements in its commercial practice shall be considered to be untruthful.

CHAPTER 5
PENALTY CLAUSES

Article 15
(Violations)

(1) A legal person or sole trader shall be fined between 3 000 and 40 000 euros if it/he uses:

- a misleading commercial practice with a misleading action (Article 5);
- a misleading commercial practice with a misleading omission (Article 6);
- a misleading commercial practice which is considered to be unfair in all circumstances (Article 7);
- an aggressive commercial practice (Article 8);
- an aggressive commercial practice which is considered to be unfair in all circumstances (Article 10).

(2) A responsible person of a legal person and a sole trader who commits an act referred to in the previous paragraph shall be fined between 300 and 2 000 euros.

(3) An individual who commits an act referred to in the first paragraph of this Article when practising an activity shall be fined between 1 200 and 15 000 euros.

CHAPTER 6
FINAL PROVISION

Article 16
(Entry into force)

This Law shall enter into force on the day following its publication in the Official Gazette of the Republic of Slovenia and shall start to apply on 1 December 2007, apart from the second and third sentences of point 6 of Article 10, which shall start to apply on 12 June 2013.

No 700-01/07-94/1
Ljubljana, 31 May 2007
EPA 1356-IV

President
of the National Assembly
of the Republic of Slovenia
France Cukjati