

Case law

Case Details

National ID: Caso Exemplar 2/2009

Member State: Portugal

Common Name: link

Decision type: Administrative decision, first degree

Decision date: 01/01/2009

Court: National Center for Information and Consumer Conflict Arbitrage

Subject:

Plaintiff: Unidentified consumer

Defendant: Unidentified mobile telecommunications provider

Keywords: inadvertent errors, inertia selling

Directive Articles

Unfair Commercial Practices Directive, [Chapter 4, Article 15, 1.](#)

Headnote

Inadvertently offering a free service to a consumer (due to a software mistake), does not give the consumer the right to receive the service free of charge. Interpreting the national law in a more expansive manner would result in an evident contractual imbalance, as the mere registration of a consumer as the beneficiary of a service or good due to computer error would mean that the consumer would be entitled to receipt of such services or goods free of charge.

Facts

A consumer (the plaintiff) received, on his cell phone, a promotional message from his network operator (defendant) announcing a refund for calls made during the month of August. The amount spent in calls during that month would be refunded in September in the event the consumer contacted a particular number and stated that he or she wished to participate in the scheme and authorized a payment of 5 EUR being made from his or her prepaid mobile phone funds.

Even though the consumer did not request or authorize the aforementioned service, due to a software error the plaintiff was automatically registered in the network operator's list of subscribers to the promotion and, therefore, the 5 EUR charge was made from the consumer's prepaid mobile funds regardless of the fact that the consumer did not request or authorize the service.

Legal issue

Article 13 (1) of the Portuguese Decree-Law 57/2008 states that "[i]n the event of dispatch of goods or services that were not ordered or solicited, which does not constitute fulfillment of any valid contract, the recipient of these goods or services shall not be required to return or pay for them and shall be allowed to keep them free of charge."

Taking into account the fact that the service was never rendered and that the plaintiff was removed from the defendant's list of subscribers to the promotion, the plaintiff has no right to receive the service for free. The plaintiff may, however, demand the return of the € 5 that were deducted from his or her funds without consent.

Interpreting Art. 13 (1) of Decree-Law 57/2008 in a more expansive manner would result in an evident contractual imbalance, as the mere registration of a consumer as the beneficiary of a service or good due to computer error would mean that the consumer would be entitled to receipt of such services or goods free of charge.

Decision

Is a customer entitled to a free service, when he advertently (due to a software error) receives an offer in this regard?

URL: <http://www.arbitragemdeconsumo.org/images/file/Casos%20exemplares/Caso%20Exemplar%202-2009.pdf>

Full text: [Full text](#)

Related Cases

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Legal Literature

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Result

The plaintiff's request to receive the promotional service for free was denied.