

Case law

Case Details

National ID: A-520-2098/2012

Member State: Lithuania

Common Name: link

Decision type: Administrative decision in appeal

Decision date: 02/04/2012

Court: Supreme Administrative Court of Lithuania

Subject:

Plaintiff: UAB "IMK LT"

Defendant: Competition Council of the Republic of Lithuania

Keywords: comparative advertising, delivery charges, objective comparison, price comparison, unfair commercial practices

Directive Articles

Misleading and Comparative Advertising Directive, [Article 4, \(a\)](#) Misleading and Comparative Advertising Directive, [Article 4, \(c\)](#)

Headnote

(1) Comparative advertising is prohibited, if the current price offered by the trader is being compared with a historical price of the competitor, even if the trader discloses the date of validity of a competitor's price.

(2) Comparative advertising is prohibited, if the trader is stating that all of its goods are delivered free of charge as compared to competitors' delivery fees, where in fact the trader charges a delivery fee when consumers buy goods of a low-value.

Facts

The plaintiff ran an advertising campaign via e-mails in which he (i) compared its prices with the prices of competitors, by showing the photographs of competitors' price labels together with the date of the photographs, and (ii) compared its terms of delivery with the competitors' terms of delivery, by stating that the plaintiff is offering a "free delivery service" and "all of the goods are delivered free of charge" (in Lithuanian). However, the plaintiff in fact applied a delivery fee of LTL 10, if the price of the goods was lower than LTL 199,99.

The defendant adopted a decision, in which it found that the plaintiff's advertising was considered to be a prohibited comparative advertising and imposed a fine on the plaintiff. The plaintiff applied to the court and requested annulment of the defendant's decision.

Legal issue

(1) With regard to the comparison of prices, the court stated that the type of comparison used by the plaintiff was not objective. When comparing the price of the respective goods, the timeframe of comparison is an essential criterion.

Therefore, when consumers are provided with the information about a historical competitors' prices, they do not acquire any objective or real value of such comparison, because they are not informed about the benefit to be obtained if the good is purchased from the plaintiff.

Moreover, such comparison demonstrates only a hypothetical price difference, which can mislead consumers and therefore does not meet the criteria of permitted comparative advertising as referred to in Article 4(c) of Directive 2006/114/EC (implemented into Lithuanian law by Article 6(3) of the Law on Advertising).

(2) With regard to the comparison of delivery terms, the court stated that the comparative advertisement was automatically prohibited if it constituted unfair commercial practice as referred to in Art 4(a) of Directive 2006/114/EC (implemented into Lithuanian law by Article 5(6) of the Law on Advertising). Since the delivery of goods was advertised as "free of charge" without any reservations, even though the delivery fee was applied when buying goods at a price lower than LTL 199,99, such commercial practice of the plaintiff was regarded as unfair under Article 20 of Annex I of Directive 2005/29/EC (implemented into Lithuanian law by Article 7(18) of the Law on Prohibition of Unfair Business-to-Consumer Commercial Practices). Therefore, the comparative advertising of the plaintiff was prohibited.

Decision

(1) Can a comparative advertisement be permitted, if the current price offered by the trader is being compared with a historical price of the competitor, even if the trader discloses the date of validity of a competitor's price?

(2) Can a comparative advertisement be permitted, if the trader is stating that all of its goods are delivered free of charge as compared to competitors' delivery fees, where in fact the trader charge a delivery fee when consumers buy goods of a low-value?

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Result

The court upheld the plaintiffs' claim in part.