

Legal Alert

Entry-Level Prices in Advertising

July 2011

The European Court of Justice issued a judgment on 12 May 2011 in a case that is of great importance for the retail sector. Interpreting the Unfair Commercial Practices Directive (2005/29, implemented in Polish law by the Act on Counteracting Unfair Market Practices dated 23 April 2007), the court held that stating an "entry-level price" (for example, "from PLN 2,000") in an invitation to purchase is not *in itself* an omission that is misleading to consumers, and thus it is permissible.

The ruling in *Konsumentombudsmannen v Ving Sverige AB* (Case C-122/10) was issued in a case involving the price of airline tickets, but it may nonetheless be extended to any other types of business.

A Swedish travel agency placed an ad in a newspaper for flights to the United States, under a banner declaring: "New York from SEK 7,820." The consumer advocate brought an action against the agency, claiming that the use of the starting price instead of the final price was an unfair practice. The agency defended itself by claiming that the ad was not an invitation to purchase. The Swedish court sought a preliminary ruling from the ECJ to determine what kind of commercial communications should be classified under the directive as an invitation to purchase, what features an invitation to purchase should have, and how the price and characteristics of the advertised product should be presented.

Key conclusions from the ruling:

1. Under the Unfair Commercial Practices Directive, an "invitation to purchase" is a commercial communication specifying the **characteristics** and **price** of a product, which, taking into account the medium of communication used, enables the consumer to make a purchase.
2. An invitation to purchase is a specific type of advertising.
3. An invitation to purchase exists as soon as the information on the product advertised and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication also to offer an actual opportunity to purchase the product (e.g. an order form), nor is it necessary for the information or ad to be placed, for example, on the outside of a shop.
4. When there is an invitation to purchase, the directive imposes on the business an **obligation to provide information** to the consumer. The business must inform the consumer of the main characteristics of the products, the business's own data, price and so on.
5. As a rule it is permissible to state entry-level prices ("price from ..."), i.e. the *lowest* price for which the advertised product may be purchased. This is justified in instances where the price cannot be calculated in advance (for example, calculation of the final price of a trip depends on a number of factors, such as when the reservation is made, the date and time of travel, and seasonal conditions).
6. The characteristics of the product may be presented verbally or visually. The same presentation may be used to refer to a product available in many different versions.
7. The degree of specificity in providing the essential characteristics of the product may differ depending on the medium used (e.g. radio, TV, internet or print).
8. The seller may provide only the *main* characteristics of the product and then refer to its website, where the characteristics of the product are presented together with the price and other conditions.

Nonetheless, the court stressed that it is up to the national courts to examine the specific commercial communications on a case-by-case basis.



The national courts must determine whether providing an entry-level price, or only certain main characteristics of the product, enables the consumer to take an informed transactional decision, and also whether the consumer has sufficient information to identify and distinguish the product from among various versions. Therefore, much will depend on the approach to this issue taken by the national courts.

In short, stating an entry-level price in advertising for products or services may be - but does not have to be - found to be a misleading omission.

Aleksandra Kunkiel-Kryńska

+48 22 50 50 775

[E-mail ▶](#)

