

Unfair commercial practices towards consumers in the Hungarian food industry

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SUMMARY

Unfair commercial practices in the food industry can include actions and practices by traders or producers that mislead consumers about the true characteristics, quality, or price of products. For example, if a producer does not accurately and transparently list the composition of products, or if advertisements contain false or misleading information about products, or if inappropriate product quality is concealed, or if promised benefits of products are not realised, or if consumers are unfairly persuaded to purchase products.

It is important to note that all traders and producers must comply with consumer protection rules. If any unfair commercial practices are observed, consumers can legitimately file a complaint with the Consumer Protection Authority or the Hungarian Competition Authority.

Unfair commercial practices can be a serious problem for consumers as they mislead them about the true characteristics of products, making it difficult to make informed purchasing decisions. Therefore, it is important for consumers to be informed about the true composition and quality of products in order to avoid falling victim to unfair commercial practices.

Through various legal cases, I demonstrate how important it is for consumers to be fully informed and aware of their rights. Additionally, I illustrate how investigating different complaints can have an impact on preventing unfair commercial practices.

Keywords: consumer; unfair commercial practice; food industry

INTRODUCTION

In the food industry, as in any other sector, unfair commercial practices that aim to mislead consumers can occur. These practices refer to actions and procedures used by traders or producers to deceive consumers regarding the real characteristics, quality, or price of products. If the producer does not inform consumers about the real quality of the product or tries to sell the product in an unfair manner, it can cause serious problems for consumers who are unable to make informed purchasing decisions. Consumer protection includes complaint handling, which is examined by competent authorities, and if found to be justified, measures can be taken to protect the rights of consumers. It is also important to note that consumer protection rules protect not only consumers but also the rights of traders and producers. If traders and producers comply with consumer protection rules, they help maintain market balance and promote the development of fair business practices, which can have a beneficial effect on consumers.

Miskolczi Bodnár and Sándor extensively cover and have covered the topic in their two-volume work "Consumer Protection Law I-II" (Miskolczi Bodnár and Sándor, 2016), as well as Judit Fazekas in her book "Consumer Protection Law" (Fazekas, 1995). The decisions of the Hungarian Competition Authority provide us with continuous guidance.

MATERIALS AND METHODS

The descriptive-analytical method is employed in this study with the primary objective of elucidating and presenting unfair commercial practices within the food industry in Hungary. Through this method, the study aims to provide a comprehensive overview of the

various types, mechanisms, and implications of unfair practices encountered by consumers.

This method involves systematically describing and analyzing the nature and prevalence of unfair commercial practices, drawing upon empirical data, case studies, and relevant literature. By adopting a descriptive approach, the study outlines the specific characteristics and manifestations of unfair practices, while the analytical aspect involves critical examination and interpretation of these phenomena. Through this method, the study endeavors to offer insights into the underlying factors contributing to unfair practices and their impact on consumers in the Hungarian food market.

In addition to the descriptive-analytical method, this study incorporates a legal analysis approach, complemented by elements of functional or practical analysis. This method entails a systematic examination and interpretation of legal provisions, regulations, and frameworks governing commercial practices in Hungary, particularly within the food industry context.

The legal analysis involves scrutinizing relevant laws, directives, and jurisprudence concerning consumer protection, fair competition, and commercial regulations. Furthermore, this method integrates a functional or practical analysis aspect, where the researcher evaluates the operational effectiveness and practical implications of legal provisions. This entails assessing how legal norms are implemented in practice, identifying potential loopholes or inadequacies in enforcement mechanisms, and considering the practical challenges faced by consumers in seeking recourse against unfair practices.

By combining legal analysis with functional/practical analysis, the study aims to offer a nuanced understanding of the regulatory framework governing commercial practices in Hungary and its efficacy in addressing unfair practices. This approach

facilitates the identification of legal gaps or deficiencies that may hinder effective consumer protection and provides recommendations for policy reforms or regulatory interventions to enhance fairness and transparency in the food industry.

RESULTS AND DISCUSSION

The Consumer

The Roots and Development of Consumer Protection law

The aim of consumer protection law is to establish a balanced situation between the two actors of market conditions, the consumer and the producer/trader. Two dominant approaches can be distinguished, the "protectionist theory" and the "Bourgoignie approach".

According to the protectionist theory, consumers are the "victims" of abuses in the free market, where consumer protection law protects the "consumer" through protective legal regulations, who "purchases, orders, receives, uses goods or services outside of their economic activity, as well as those who are the addressees of information related to the goods or services". The "Bourgoignie approach," on the other hand, considers the goal of consumer rights to be the legal assistance for protecting consumer interests. Rather than focusing on "protection," it emphasizes "support," seeing the importance of consumer protection in the thorough development of education, the right to information, the right to legal protection, and the right to seek redress and enforce claims (Keskeny, 2023).

Consumer protection law is a distinct product of the 20th century, but its predecessors can already be found in ancient times. The Hungarian term "fogyasztóvédelem" is a mirror translation, its English equivalent is "consumer protection", while in the German-speaking area, it is known as "Kundenschutz" or "Verbraucherschutz". Although consumer protection and the legal framework that implements it are achievements of the second half of the 20th century, their roots can be traced back to the laws of Hammurabi. The book of Leviticus also contains provisions and recommendations aimed at protecting the "consumer". Some basic principles can be traced back to ancient times, so consumer protection can be considered as old as the formation of human communities (Szendrő, 2020).

In the beginning, justice was based on customary law, later on Guild or Trade regulations, which were characterized by the fact that market violations were punished with public law sanctions, such as revocation of trading rights, public exposure, or other forms of public humiliation, resulting in the loss of the trader's good reputation. In addition, criminal law sanctions were not uncommon.

During the feudal era, the market remained the center of communal and commercial life. Initially, royal edicts prohibited certain behaviors by traders, such as fraud, usurious lending, deviation from the fair price or good quality. The church was responsible for enforcing the rules contained in the royal edicts against

traders and ensured that economic competition was conducted within normal limits.

Later on, market courts were established as a fast and efficient solution for handling market and bazaar conflicts and reaching a fair judgment for both parties. These courts initially made their judgments based on customary law, then applied public law sanctions based on Guild and Trade regulations (Andorka, 1966).

While the need for appropriate consumer protection regulations has been present in Western European countries since the 1970s, in Hungary, it was only in the 1980s that this necessity was primarily articulated on a theoretical level. In Hungary, the 1997 Consumer Protection.

According to the decision titled "First preliminary programme of the European Economic Community on the policy of consumer protection and information" adopted by the European Council on 14 April 1975, consumer rights include the protection of consumer health and safety, the protection of consumer economic interests, the right to redress, the right to information and education, as well as the right to be heard and to represent consumer interests. The Maastricht Treaty also elevated consumer protection to official policy among numerous new Community competences (Article 129/A) (Sós, 2002).

Act CLV defines the state's responsibilities for protecting consumer interests based on these fundamental rights and its basic institutions, including:

- Protection of consumer health and safety
- Protection of consumer economic interests
- Consumer information and education
- Enforcement of consumer demands
- Representation of consumers

Private law has evolved much more slowly than public law: the legal institutions that form the basis of seller liability in modern law, such as warranty, liability for deception, and breach of contract, only emerged in the 18th and 19th centuries. The "legal passivity" characteristic of contract law was due to the principle of free will and unconditional contractual freedom, in line with the free-market system (Miskolczi Bodnár and Sándor, 2016).

Consumer advocacy, as we understand it today, emerged in the 1960s and 1970s when consumer-centric legislation, which had previously been scattered and sporadic, received new and distinct frameworks. Two main approaches to the development of consumer protection can be distinguished: the North American and European models. The European model includes the uniform legal framework of the European Union (Community), as well as the distinctive Scandinavian approach, first separate from and then, following the accession of Scandinavian countries, as part of the Union. The two models have influenced and continue to influence each other's development (until the 1980s, Europe primarily followed the American model), but they also differ significantly in many respects.

We can say that consumer protection law is a relatively new but diverse and pluralistic legal field. It is a kind of mixed technical law that lies at the intersection of public and private law. It contains many

rules in the fields of administrative law, civil law, and criminal law, both substantive and procedural.

One of the fundamental questions of consumer protection legislation is to define the protected parties, namely the consumer and, as their counterpart, the trader-entrepreneur. The determination of the scope of the definitions is not straightforward, as indicated by the volume titled "Consumer Law," which reviews the legal material of the European Union and cites differences between the member states, inter-member state disparities, and the EU acquis (Micklitz et al., 2010).

The food industry market is currently quite saturated, making it an essential expectation towards its participants to sell guaranteed safe food. This can be ensured by a properly functioning tracking system, which also proves their reliability. While satisfying high customer demands, companies are profit-oriented, so it is important for them to be able to perform proper identification in case of a product recall, without having to destroy all goods.

Trade is present in every aspect of our lives, and within it, the food trade is receiving increasing attention. In the past, access to vegetables and fruits outside of their growing season was limited. Today, due to advanced logistics systems and the globalization of the food trade, vegetables and fruits are practically available in any season. However, as transportation distances extend and the food trade becomes more globalized, the role of consumer protection is undeniably increasing.

Future trends in consumer protection development

Continuous legislative changes are necessary to ensure the most effective protection of consumer interests. The directions of necessary changes are determined, on the one hand, by the challenges posed by internal legal development, and on the other hand, by the requirements primarily set at the level of EU directives.

An example of typical internal legal development is the draft of the new Civil Code, which proposes many significant changes to the regulation affecting consumers. The system of civil law providing for consumer claims would be expanded with the product liability institution, while the currently applicable rules on mandatory warranty would be abolished, parallel to the rewriting of the meaning of the mandatory suitability period. The development of private law, the change of regulations in civil law, is not the only and exclusive aspect of the development of consumer protection law. This change is complemented by continuous changes in public law regulations, which primarily entail changes in the organization and operation of consumer protection authorities. Legal development points towards the increasingly broader provision of consumer rights and the recognition of the necessity of creating adequate legal guarantees.

To this end, it is essential, on the one hand, that the European Union's community-level legislation provides appropriate frameworks to eliminate unfavourable conditions for consumers resulting from

regulatory differences between member states, and on the other hand, that the domestic legal regulation, in addition to compliance with the required application deadlines and the incorporation of the required regulatory structures shows sufficient willingness to create new and more effective methods of resolving consumer needs, in line with flexible market conditions (Fazekas, 1995).

Unfair commercial practices are a type of illegal activity that is prohibited by law. Commercial practices refer to the behavior, activities, omissions, advertising, marketing, or other commercial communications of a business or person acting on behalf of the business in direct relation to the sale, provision of services, or sales promotion to consumers. Unfair commercial practices are prohibited.

Regulation in the European Union

Unfair commercial practices, such as misleading advertising and aggressive sales techniques (e.g. harassment, coercion, and undue influence), are prohibited in all member states of the European Union. Consumers are wary of cross-border purchases because they are unsure of their rights and fear possible fraud. The new EU rules aim to ensure that consumers are protected by the same rules against aggressive commercial practices and traders using unfair means, whether they buy from a corner store or from a foreign seller online.

Procedure in Hungary

In the case of unfair commercial practices against consumers, government offices under the professional supervision of the Ministry of Innovation and Technology are responsible for consumer protection. The National Bank of Hungary can take action in cases of illegal commercial practices by financial institutions it supervises. The Hungarian Competition

Authority (GVH) can intervene in such cases if the illegal commercial practice has a significant impact on economic competition (Keskeny, 2022).

Legal cases based on the decisions of the Hungarian Competition Authority

I. The Competition Council conducting the proceedings finds that the promotion of the Air7 dietary supplement product line from April 2020 to August 2022 using various health claims and recommendations from healthcare professionals and institutions violated the provision on information to be provided to consumers regarding food as set out in Article 7(1)(a) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, as well as the prohibition of unfair commercial practices against consumers in Section 6(1)(b)(bj) of Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices. These actions also violated the prohibition set out in Section 3(1) of the Act on Unfair Commercial Practices, as implemented by the fact pattern set out in subpoint (bj) of point 1 of the Annex to the Act.

The responsibility for the above behaviors rests with

- Siren7 LLP from 14 April 2020,
- Siren7 Kft. "f.a." from 4 November 2020,
- GREEN SPLID S.R.L. from 22 February 2022,
- Kalibra Innovatív Kft. from 4 April 2022.
- Furthermore, the Competition Council finds that Siren7 LLP unlawfully marketed and promoted the product line from 14 April 2020 to 25 April 2020, and Kalibra Innovatív Kft. did the same from 4 April 2022 to 13 April 2022, thus violating the prohibition set out in Section 3(1) of the Act on Unfair Commercial Practices by implementing the conduct set out in point 9 of the annex to the Act.
- Considering the above violations, the Competition Council orders the following competition supervisory fines to be paid:
 - Siren7 LLP: HUF 6,694,000 (six million six hundred and ninety-four thousand forints)
 - Siren7 Kft. "f.a.": HUF 53,155,000 (fifty-three million one hundred and fifty-five thousand forints)
 - GREEN SPLID S.R.L.: HUF 500,000 (five hundred thousand forints)
 - Kalibra Innovatív Kft.: HUF 200,000 (two hundred thousand forints)

I.I. Summary of the case

1. The problems identified in this competition supervision procedure are mainly related to the fact that the companies subject to the procedure marketed certain members of the Air7 dietary supplement product family from April 2020 as lung vitamins (using new and different notification numbers, but fundamentally only changing the packaging and commercial practices), without any basis for this specification, targeted lung protection, and numerous other health-related claims.

2. It is also significant that the product family was launched and widely promoted during the COVID-19 pandemic, when lung (and generally immune system) protection and strengthening were widely recognized as important, and this was emphasized in the product family's commercial campaigns, including its PR. The PR communication of the product family also featured numerous healthcare professionals and institutions who also drew attention to the importance of lung protection.

3. The complained-about commercial practice (through objectionable health claims and slogans) was implemented on the product family's packaging, website, and social media pages, so the start of marketing and the start of the commercial practice are the same. However, it is also significant that after an intensive and significant-cost commercial practice following the introduction, in 2022 the products, the promotion of the brand, and the packaging of the products notified by the parties to the procedure were implemented in a much narrower circle, and the slogans on the packaging were eventually modified following various regulatory procedures.

II. The Competition Council conducting the procedure has found that the companies under investigation engaged in unfair commercial practices between May 2019 and February 2021 on the Nutriversum products' YouTube channel and other communication tools by violating sectoral provisions, namely,

- by recommending (using and presenting) Nutriversum products by Dr. György Gődény, who is also known as a pharmacist, and
- in some of the videos (listed in point 48 of this decision's reasoning), in a way that suggests that consuming the relevant dietary supplements could substitute for a balanced and varied diet.
- Therefore, the Competition Council imposes a competition supervision fine of HUF 23,400,000 (twenty-three million four hundred thousand forints) on Nutriversum Kft. and a fine of HUF 166,200 (one hundred sixty-six thousand two hundred forints) on EAST TO WEST Hungary Trade Kft. for the above violations.

II.II.

1. The Hungarian Competition Authority launched a competition supervision procedure under number VJ/35/2020 on October 21, 2020, as it had detected that, for the promotion of the food supplements and other food products it distributes, Nutriversum Kft. (hereinafter: Nutriversum) used claims related to recommendations by healthcare professionals in a 16-part video series titled "The Biggest Stupidities About Supplements on the Internet" by Dr. Gődény, as well as in a YouTube video titled "Surviving the CORONAVIRUS? Dr. Gődény Answers"

(<https://www.youtube.com/watch?v=sO5t7sK3XfQ>) and another video titled "CORONAVIRUS: What's Behind the Numbers? Dr. Gődény Analyzes" (https://www.youtube.com/channel/UCMcgZP4ZhYQm0GyX_3BY1uQ), which contained references to health professional recommendations.

2. Pursuant to Article 12(c) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (hereinafter: Regulation (EC) No 1924/2006), which concerns claims related to the nutritional composition and health effects of foods, the use of health claims referring to recommendations by individual doctors or health professionals or by organizations not mentioned in Article 11 of the same regulation is not permitted. Therefore, it is probable that the party to the proceedings violated the provisions of Article 7(1)(a) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (hereinafter: Regulation (EU) No 1169/2011) and also violated the ban on unfair commercial practices against consumers provided for in Section 6(1)(b)(bj) of Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices (hereinafter: Act XLVII of 2008).

3. Following the initiation of the competition supervision procedure, the Hungarian Competition Authority extended the procedure to all commercial practices carried out by Nutriversum with the participation of Dr. György Gődény, as the party to the proceedings is likely to have given the impression in these advertisements that is contrary to the sectoral rules on foodstuffs when it suggested or stated in its commercial communication that the use of the products was suitable for replacing or substituting a balanced and varied diet. By doing so, the party to the proceedings probably violated the provisions of Article 7(1)(b) of Regulation (EU) No 1169/2011 and Section 6(1)(b)(bj) of Act XLVII of 2008.

CONCLUSIONS

Unfair trade practices pose a significant threat to consumers, undermining their ability to make informed purchasing decisions and eroding trust in the marketplace. These practices often involve deceptive tactics that misrepresent the true characteristics of products, such as their composition, origin, or quality. As a result, consumers may unknowingly purchase substandard or misrepresented goods, leading to dissatisfaction, financial loss, and potentially harm to their health or safety.

One of the most concerning aspects of unfair trade practices is their ability to deceive consumers. Misleading labeling, false advertising, and deceptive packaging can create an illusion of quality or value that does not align with the actual product. For example, a product may be labeled as "all-natural" or "organic" when it contains synthetic ingredients or harmful additives. Similarly, deceptive marketing techniques, such as exaggerated claims or manipulated imagery, can manipulate consumer perceptions and lead them to make decisions based on false premises.

In this context, consumer awareness and empowerment are crucial for mitigating the impact of unfair trade practices. By educating consumers about their rights, providing access to accurate information, and promoting critical thinking skills, authorities can empower individuals to make more informed choices and resist deceptive marketing tactics. Transparency in labeling, certification programs, and consumer advocacy initiatives can also help foster trust and accountability in the marketplace.

Government intervention plays a pivotal role in combating unfair trade practices and protecting consumer interests. Hungarian authorities have recognized the importance of addressing this issue and have taken steps to strengthen regulatory enforcement and impose stricter penalties on offenders. The imposition of higher fines serves as a deterrent, signaling to businesses that engaging in deceptive practices will not be tolerated and encouraging compliance with consumer protection laws.

Despite these efforts, consumers may still feel vulnerable in their interactions with large corporations, which wield considerable influence and resources. However, government intervention provides a vital safeguard against abuses of power and ensures a level playing field for all market participants. By enforcing regulations, investigating complaints, and imposing sanctions on violators, authorities can uphold the integrity of the marketplace and safeguard consumer welfare.

In conclusion, unfair trade practices undermine the fundamental principles of fairness, transparency, and trust in the marketplace. By raising awareness, empowering consumers, and implementing robust regulatory measures, authorities can mitigate the prevalence and impact of these practices, fostering a more equitable and accountable trading environment for all stakeholders.

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