[BG] Advertising campaign with the slogan “The best from Bulgaria. The best from Europe” is misleading

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On 8 February 2016, the Supreme Administrative Court of the Republic of Bulgaria dismissed the action brought by the retailer Lidl Bulgaria EOOD and Co. against the decision of the Commission on Protection of Competition (the Commission) and confirmed the decision of the lower court. The Commission had imposed on Lidl a fine of 0.1% of its revenues for 2012, or 370,859 leva (approx. EUR 189,620), for a misleading advertising campaign employing the slogan “The best from Bulgaria. The best from Europe”.

The campaign involved outdoor, print, and TV advertising. In the TV commercial, a young woman in Spain, France and Bulgaria, bought food items typical of the country, such as oranges, a baguette, camembert and yoghurt. At the end of the commercial came the aforementioned slogan followed by “Lidl is worth it”. The other advertising formats, in which other European countries were included with products characteristic of the country, were designed in a similar way. The focus was only on those products whose designation or brand could be connected to Lidl, as they are sold exclusively by that company. As the products were not shown in an abstract way and were presented without any distinguishing features, the Commission held that the claim that they were “the best” could only be seen as relating to the brands or designations concerned. The Commission accordingly examined in its decision the extent to which the Bulgarian products shown (yoghurt, honey, lutenitsa - a traditional Bulgarian vegetable paste - and chicken) were objectively the best in their category in terms of their quantity and quality. After a thorough analysis, it was not possible to prove that that was the case.

The Supreme Administrative Court emphasised in its decision that it had been right for the Commission to examine whether the advertisers’ claim (that the products were “the best”) was objectively correct and sufficiently precise. Inasmuch as that examination had established that the products were in fact not the best, the Commission had been right to rule that the advertising slogan had been objectively untrue and that its dissemination had been an unfair business act. The Court continued to state that it was not possible to discern any fact that could support the company’s claim: that the aim of the advertising campaign had been completely different and the intention had not been to emphasise that the products were the best in their category but, rather, to describe them as the most distinctive for the European country concerned.

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The Court also dismissed as unfounded the plaintiff Lidl's further arguments that the advertising was not a statement of fact but only a subjective opinion on the part of the advertisers and that the fine imposed did not correspond to the purpose of the law. It stressed that when conducting an assessment of the misleading character of the advertising it was irrelevant whether the deception resulted from false claims or a subjective opinion.

Before the state institutions had considered them, the facts had been determined in 2013 by the National Council for Self-Regulation. The Council's Ethics Commission ruled that the advertising breached neither Article 5.1 (deception) nor Article 5.5 (veracity) of the Advertising Code of Ethics. In the Council's opinion, the advertising slogan was not to be understood in relation to actual products. Rather, the intention of the advertising was to emphasise the wide range and international nature of the plaintiff's products. However, neither the Commission on Protection of Competition nor the Court were bound by that decision.

РЕШЕНИЕ № 1714 на Комисията за защита на конкуренцията от 18.12.2013 г

http://reg.cpc.bg/Decision.aspx?DecID=300038857

Decision No. 1714 of the Commission on Protection of Competition of 18 December 2013

РЕШЕНИЕ № 1283 Върховен административен съд на Република България от 08.02.2016 г

http://www.sac.government.bg/court22.nsf/d6397429a99ee2afc225661e00383a86/647c816272b97ca3c2257f46002f2f19?OpenDocument

Decision No. 1283 of the Supreme Administrative Court of the Republic of Bulgaria of 8 February 2016

РЕШЕНИЕ № 147 на Етичната комисия на Националния съвет за саморегулация от 19.09.2013 г

http://www.nss-bg.org/files/4f0bf462eea19b3427c2494feee11f01.pdf

Decision No. 147 of the Ethics Commission of the National Council for Self-Regulation of 19 September 2013

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