

[LT] Supreme Administrative Court on surreptitious advertising

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On 5 May 2021, Lithuania's Supreme Administrative Court confirmed that the republishing of a private company's press release can constitute surreptitious advertising.

The case was initiated by the complaint of a private person P.P., asking whether the news media outlet UAB 15min have disseminated surreptitious advertising by publishing the article: "New travel trends: all-inclusive or everything unexpected?". In this article the media outlet basically republished the press release of the travel agency UAB Baltic Tours Group, thus P.P. claimed that this is surreptitious advertising which is masked as news, and not marked as a "Partner Content". Thus, P.P. submitted a complaint to the State Consumer Rights Protection Authority (Vartotojų teisių apsaugos tarnyba - the Authority) to initiate an investigation for a breach of the Law on Advertising in the Republic of Lithuania (Lietuvos Respublikos reklamos įstatymas - the Law on Advertising). However, the Authority refused to start the investigation. Such action initiated an appeal to the administrative courts of Lithuania.

An important aspect to note is the fact that UAB 15min and UAB Baltic Tours Group had no agreement between themselves and there was no payment for the republishing of the press release.

The court of the first instance - Vilnius Regional Administrative Court (*Vilniaus apygardos administracinis teismas*), on 30 September 2019, rejected the applicant's complaint. The court found that the text of the publication did not correspond to the concept of surreptitious advertising: the publication was not paid for, it was not intended to advertise services, and it only transmitted previously published information, therefore, the average consumer could not be objectively misled by the purpose of such information.

However, on 5 May 2021, such a decision was reversed by the Supreme Administrative Court of Lithuania (*Lietuvos vyriausiosios administracinės teismas* - the Court), who noted that remuneration is not a prerequisite to determining whether advertising is surreptitious advertising. The Court noted that the main focus should be made on the promotion of relevant economic behavior, as mentioned in Article 2(1) of the Law on Advertising of the Republic of Lithuania.

Moreover, it is not required that the dissemination of certain information should actually encourage the purchase and/or consumption of the products. If a consumer did not buy the goods (did not purchase the service), this does not mean that their economic behavior was not affected. At the same time, the Court noted Article 2 (5) of the Law on Advertising requires an assessment of whether the information disseminated may mislead consumers as to the actual purpose of providing this information. In this specific case, one had to determine whether the information provided can be seen as an attempt not to disclose the true purpose of the publication.

The Court concluded that the fact that the publication does not contain an exact reference to an identifiable press release does not release it from liability. Moreover, following the guidelines of the Court, the logical and grammatical analysis of the statements of the employees of UAB Baltic Tours Group (such as “10 unforgettable nights, each morning of which begins with spectacular adventures and the day does not stop surprising”; “We offer even more experiences on the experience trip to Bali”, “This trip is comprehensive and unforgettable, and the feedback from the travelers is great. When they return, they even come to us to share their impressions a few days later, and this is the best assessment of our diligent work”) allows concluding that they encouraged the purchase of a trip to Bali from UAB Baltic Tours Group, despite the fact that the text does not directly emphasize the specific service, which presupposes reasonable suspicions that the Law on Advertising has been violated.

Lietuvos vyriausiojo administracinio teismo 2021 m. gegužės 5 d. nutartis administracinėje byloje Nr. eA-2900-415/2021

Ruling of the Supreme Administrative Court of Lithuania in administrative case No. eA-2900-415/2021, dated 5 May 2021.

