

Unfair trader? Step into consumer's shoes.

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Let's imagine the following situation: you are a successful trader in the grocery retail sector and you opened at least a dozen retail stores of all formats all across Croatia. In fact, during the pandemic, you recognized the long-term potential of online retail and invested significant resources in modernizing your delivery service. As a result, many consumers started to use your "online" channels. To you, consumers always come first, and you foster a transparency policy towards consumers. However, recently you noticed increasing consumer criticism stating that products advertised in the "online" channel are not available in stores at all, internet portals point to failures in informing about the conditions of free shipping, and recently, an inspection of one of your retail stores in Zagreb found that you imposed unfair commercial practices on consumers which related to how the price of one product was calculated. You are aware that you need to analyze this problem in detail and, as a first step, you decide to get better informed about what is unfair commercial practice and what are your obligations under the Consumer Protection Act.

What is an unfair commercial practice?

Unfair commercial practice is a term that traders, as well as consumers, are familiar with from earlier "versions" of the Consumer Protection Act ("CPA"). It refers to trader's practices in relation to the consumer (before, at the time and after conclusion of the agreement) and regarding particular product, where such practice is:

- contrary to the requirements of professional attention, or
- is likely to have a material impact on the economic behavior of the average consumer or the average member of a particular group to whom such a practice is intended, or to whom it reaches.

The problem with such practice is mainly that it is considered capable of creating a situation where the consumer will make a purchasing decision that they would not otherwise make.

That is why the CPA devotes a significant part of its provisions to the regulation and prevention of such actions or conscious omissions of traders. Two special forms that are singled out are (1) misleading

business practices and (2) aggressive business practices.

Since in practice misleading business practices are the biggest "stumbling block", we will further dedicate this issue specifically to this form of unfair commercial practices.

Misleading practice - in general

Business practice will be considered misleading if it contains inaccurate (untrue) information or if it otherwise, including its overall presentation and even if the information is factually accurate, misleads or likely to mislead the average consumer regarding the existence or nature of the product, its basic characteristics, servicing obligation, replacements or spare parts, product repair, price of the product, trader's obligations, the rights, nature and characteristics of the trader and/or his representatives, the rights of the consumer and any risks to which the consumer is exposed. A key problem is if such practices lead, or are likely to lead the average consumer to make a purchasing decision that they would not otherwise have made.

In doing so, not only misleading actions are considered problematic, but also misleading failures of the trader in communicating certain

notifications and information that are essential for the consumer to decide on purchasing of the product / using the service.

For example, a misleading action would be displaying of trademarks, quality signs or similar characters for a particular product without the necessary authorization. On the other hand, it would be misleading to invite consumers to purchase product at a given price, without highlighting the fact that the trader has reasonable grounds to believe that it will not be able to provide delivery of that or similar product at that price.

While the list of misleading actions and omissions can be found in CPA, that is not the "closed" or exclusive list of examples. Any action or omission that could - from a consumer's perspective - be classified as the unfair practice is risky.

Some CPA 2022 novelties

In [the previous consumer protection issue](#), we addressed one new example of misleading actions related to the publication and the use of consumers reviews of products and services.

In addition to reviews, traders will now need to keep an eye on communication and information in the

context of dual quality products. Placing of goods on the Croatian market and claiming that they are identical to products placed on the market in other Member States, although those goods differ significantly in composition or characteristics is now justified as misleading (unfair) practice (unless such claim is justified by legitimate and objective criteria).

This novelty resulted from EU efforts in addressing the following problem: almost identical product packaging and labels are placed on different quality and composition products located in different Member States. Also, sometimes "inferior" products are sold at an even higher price¹ (e.g., the popular "Nutella question" and the difference in stores across European countries²).

Also, from now on, resale of tickets for events is also treated as a misleading practice if the trader has obtained these tickets using automated means able to override any restriction on the number of tickets that one person may purchase or any other rules applicable to the purchase of tickets.

¹ For more see: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644192/EPRS_BRI\(2019\)644192_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644192/EPRS_BRI(2019)644192_EN.pdf)

² For more see: <https://www.ft.com/content/7ea1327c-96e3-11e7-a652-cde3f882dd7b>.

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