



GAZDASÁGI
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Fine for unproven curative effects

Üstöki Kft. falsely assigned curative effects to some of its products that were, on top of it, offered at promotional prices for years with unreal price reductions. As a consequence, the Hungarian Competition Authority (GVH) imposed a fine of HUF 13 million (approx. EUR 48,5 thousand) on the undertaking and ordered it to publish a corrective statement.

The GVH observed that Üstöki Kereskedelmi, Szolgáltató és Ügynöki Kft. (Üstöki) as distributor assigned curative effects to the products Tahiti Noni Juice and Forever 365 Aloe Vera for popularizing them in its advertisements. According to the advertisements, the products mentioned are able to cure illnesses, malfunctions and anomalies of human organs. The GVH also observed that Üstöki had continuously been advertising the products Tahiti Noni Juice, Forever 365 Aloe Vera and Prolong at highly reduced prices and claimed that they were only available at reduced prices for a very limited period.

Based on judicial experience the burden of proof is always on the advertiser who is to prove that its statements made in advertisements are true and correspond to reality. In the course of the proceeding Üstöki did not submit any documents that could have confirmed with scientific evidences that the food products Tahiti Noni Juice and Forever 365 Aloe Vera could prevent, cure and regenerate illnesses. The facts that the information in the ads highlights that doctors, scholars examine the raw materials of the products; a natural otolaryncologist speaks about one of the products in the television advertisement and he claims indirectly that Noni is a medicinal product ("can be taken parallel with other medicinal products"), are all further enhancing the conviction in consumers that the products mentioned might have curative effects.

According to the GVH the information used in the communication tools applied by Üstöki for more than 3 years might have made consumers believe that Tahiti Noni Juice, Forever 365 Aloe Vera and certain Prolong products were available at bargain prices, with some at 50, 36, 38 percent discount. In the information provided, Üstöki made the false impression that it was a special single bargain sale, however the alleged "discount" price was continuously available.

The investigation of the GVH revealed that the 36 and 38 percent discounts applied in the case of Tahiti Noni Juice and Forever 365 Aloe Vera products since 2007 were not compared to the prices that were reduced by 50 percent and applied in 2006-2007 but to the original price. Following the bigger discount (50%) applied in the beginning, smaller discounts (36 and 38 percent) compared to the original price were such discount prices that meant an increase in prices for consumers for the same product that used to cost less directly preceding the "discount" in the period between 2006 and 2007. In the practice of the GVH it is deemed unlawful if an undertaking indicates a higher and a discount price, and

though it had earlier applied the higher price but not directly before the discount price and only exceptionally.

It is unlawful that Üstöki used in its ads the followings: "now", "opportunity of a lifetime" and "while stocks last". By using these expressions Üstöki falsely claimed that the products advertised were only available at a discount price for a very limited period. The fact that the stocks still last contradicts the message of the advertisement.

Since Üstöki deceived consumers by the above practice between 2006 and 2008, the GVH imposed the maximum amount of fine possible for this kind of infringements; hereby Üstöki received a fine near to 10 percent of its net turnover in the preceding business year. When determining the amount of the fine, the GVH considered as an aggravating circumstance that the undertaking had already been found guilty of infringing the Competition Act, the focus of its business policy lied in the concept of advertising a curative effect without any scientific evidence and it was engaged in the deceiving activity for several years. At the same time it proved to be a mitigating factor that the undertaking admitted the infringement and tried to rectify the mistakes in the advertisements.

Besides imposing a fine, the GVH also ordered the undertaking to publish a corrective statement in respect of the unlawful information. In this statement Üstöki has to repeat a part of the decision of the GVH without any modifications, twice in the paper Bors, with the same size as in its earlier advertisements.