

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER I INTELLECTUAL PROPERTY, MEDIA AND IT

INTELLECTUAL PROPERTY, MEDIA AND IT NEWSLETTER
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INTELLECTUAL PROPERTY, MEDIA AND IT NEWSLETTER

I HIGHLIGHT

Unfair commercial practices in relations between companies

Last September, 23 was published in the Official Gazette (No. 186/2015, Series I), the Decree-Law No. 205/2015 making the first amendment to Decree-Law No. 57/2008, of March, 26 which establishes the legal regime applicable to unfair commercial practices in relations with consumers, occurring before, during or after a commercial transaction concerning goods or services.

The Decree-Law No. 57/2008 transposed into national law the Directive 2005/29/EC of the European Parliament and of the Council of May, 11 2005, and establishes a single general prohibition of unfair trade practices that distort economic behavior of consumers and applies to unfair commercial practices, including misleading advertising, which directly harm the economic interests of consumers and indirectly the legitimate economic interests of competitors.

Since Decree-Law No 57/2008 was not fully in conformity with the provisions of Directive 2005/29/EC, it became necessary to clarify the content of some provisions and revoke those that could not correspond to the text of the Directive.

The Decree-Law No. 205/2015 has also set the authorities responsible for the imposition of fines by updating the reference to the Fines Enforcement Committee on Economic and Advertising Matters (Comissão de Aplicação de Coimas em Matéria Económica e de Publicidade), extinct in 2011, whose duties in the field of economy were integrated into the Food and Economic Safety Authority (Autoridade de Segurança Alimentar e Económica), and in advertising in the Consumer General Directorate (Direcção-Geral do Consumidor).

Finally, and with regard to fraud practices performed by companies in relations with other companies, the legislation in question has expanded the rules on unfair commercial practices in relations between companies with respect to some misleading actions.

II LEGISLATION

Statement of Rectification No. 592-A/2015. DR No. 130/2015, Supplement 1, Series II of 07-07-2015

Update of Industrial Property rates' table.

Statement of Rectification No 613/2015. D.R. No 136/2015, Series II 15-07-2015

It is considered without effect the rectification statement of the industrial property rates' table.

Statement of Rectification No 614/2015. D.R. No 136/2015, Series II 15-07-2015

Statement of rectification grinding industrial property rate table without effect.

Ordinance No. 210/2015. D.R. No 137/2015, Series I of 16-07-2015

Setting the allocation mode of the revenue resulting from the special online gaming tax according to the capitation scheme, to Azores and Madeira.

Ordinance No. 211/2015. D.R. No 137/2015, Series I of 16-07-2015

Setting the amounts of fees under the Legal Framework for Games and Online Betting.

Regulation No. 419-A / 2015. DR No. 138/2015, Supplement 1, Series II of 17-07-2015

Regulations for Recognition of Certification Entities of the Games Technical System.

Regulation No. 425-A / 2015. DR No. 139/2015, Supplement 1, Series II of 20-07-2015

Regulation of Online Bingo Game Rules.

Ordinance No. 254/2015. D.R. No 162/2015, Series I of 20-08-2015

Approves the Registration Regulation of Cinematographic and Audiovisual Works and the fees schedule relating to the acts and services provided by the Institute of Cinema and Audiovisual, IP (IPA, I.P.).

Law No. 127/2015. D.R. No 172/2015, Series I of 03-09-2015

Proceeds to the tenth amendment to Law 5/2004 of 10 February (Electronic Communications Law).

Directive (EU) 2015/1535 of the European Parliament and of the Council of 09-09-2015. OJEU L241 / 1 of 9.17.2015

Information procedure in the field of technical regulations and rules on services of the information society.

Law No. 149/2015. D.R. No 177/2015, Series I of 10-09-2015

The first amendment to Law No. 35/2012, of august, 23, creating the compensation fund of the universal service for electronic communications foreseen in the Electronic Communications Act, for the financing of the net costs for the provision of the universal service.

III CASE LAW

Judgment of the Court of Justice (Fourth Chamber) of 13-05-2015. OJEU C236/09, of 20-07-2015

Case C-516/13 (Copyright - Directive 2001/29/EC - Article 4(1) - Distribution right - Concept of 'distribution to the public' - Offer for sale and advertising by a trader of a Member State on its website, by direct mail and in the press in another Member State - Reproductions of protected furniture for sale without the consent of the holder of the exclusive distribution right - Offer or advertising not leading to the purchase of the original or copies of a protected work.)

Article 4(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that it allows a holder of an exclusive right to distribute a protected work to prevent an offer for sale or a targeted advertisement of the original or a copy of that work, even if it is not established that that advertisement gave rise to the purchase of the protected work by an EU buyer, in so far as that advertisement invites consumers of the Member State in which that work is protected by copyright to purchase it.

Judgment of the Court of Justice (First Chamber) of 4-06-2015. OJEU C 236/08, of 20-07-2015

Case C-497/13 (Directive 1999/44/EC - Sale of consumer goods and associated guarantees - Status of the purchaser - Consumer status - Lack of conformity of the goods delivered - Duty to inform the seller - Lack of conformity which became apparent within six months of delivery of the goods - Burden of proof.)

Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees must be interpreted as meaning that a national court before which an action relating to a contract which may be covered by that directive has been brought, is required to determine

whether the purchaser may be classified as a consumer within the meaning of that directive, even if the purchaser has not relied on that status, as soon as that court has at its disposal the matters of law and of fact that are necessary for that purpose or may have them at its disposal simply by making a request for clarification.

Article 5(3) of Directive 1999/44 must be interpreted as meaning that it must be regarded as a provision of equal standing to a national rule which ranks, within the domestic legal system, as a rule of public policy and that the national court must of its own motion apply any provision which transposes it into domestic law.

Article 5(2) of Directive 1999/44 must be interpreted as not precluding a national rule which provides that the consumer, in order to benefit from the rights which he derives from that directive, must inform the seller of the lack of conformity in good time, provided that that consumer has a period of not less than two months from the date on which he detected that lack of conformity to give that notification, that the notification to be given relates only to the existence of that lack of conformity and that it is not subject to rules of evidence which would make it impossible or excessively difficult for the consumer to exercise his rights.

Article 5(3) of Directive 1999/44 must be interpreted as meaning that the rule that the lack of conformity is presumed to have existed at the time of delivery of the goods (i) applies if the consumer furnishes evidence that the goods sold are not in conformity with the contract and that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods. The consumer is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller; (ii) may be discounted only if the seller proves to the requisite legal standard that the cause or origin of that lack of conformity lies in circumstances which arose after the delivery of the goods.

IV RESOLUTIONS, RECOMMENDATIONS, OPINIONS AND OTHER

Opinion of the European Economic and Social Committee. OJEU C 230/72 of 14-07-2015

Opinion of the European Economic and Social Committee on the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee — Towards a renewed consensus on the enforcement of Intellectual Property Rights: An EU Action Plan.

Opinion of the European Economic and Social Committee. OJEU C 230/112, of 14-07-2015

Opinion on the strategy for the protection and enforcement of intellectual property rights in third countries.

Opinion of the European Economic and Social Committee. OJEU C 230/91, of 14-07-2015

Opinion of the European Economic and Social Committee on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on resource efficiency opportunities in the building sector; on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Towards a circular economy: A zero waste programme for Europe; and on the Proposal for a Directive of the European Parliament and of the Council amending Directives 2008/98/EC on waste, 94/62/EC on packaging and packaging waste, 1999/31/EC on the landfill of waste, 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment.

Executive Summary of the Opinion of the European Data Protection Supervisor. OJEU C 232/8, of 16-07-2015

Executive Summary of the Opinion of the European Data Protection Supervisor on “Mobile Health: Reconciling technological innovation with data protection”.

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