

Full title of law or regulation	The Act on Combating Unfair Commercial (Market) Practices PO: http://isip.sejm.gov.pl/DetailsServlet?id=WDU20071711206 EN ¹ : http://www.gregsregs.com/downloads/POActCombatingUnfairPractices2007EN.pdf Up-to-date GRS trans EN: http://www.gregsregs.com/downloads/POUnfairCommercialPracticesActENwikiregs.pdf
Title of relevant section	Misleading Actions and Misleading Omissions
Misleading Actions	
Article 5.1	A commercial practice shall be regarded as misleading if it causes or is likely to cause the average consumer to take a transactional decision ² that he/ she would not have taken otherwise. ³
Articles 5.2.1 to 5.2.4	Examples of misleading actions; the following practices may be misleading: <ul style="list-style-type: none"> ○ Dissemination of false information⁴ (Art. 5.2.1) ○ Dissemination of factually correct (i.e. true) but misleading information (Art. 5.2.2) ○ An action related to the introduction of a product on the market that may be misleading as regards the products or their packaging, trademarks, trade names or other markings that distinguish the trader or his/her products, in particular comparative advertising within the meaning of Article 16(3) of the Act of 16 April 1993 on combating unfair competition (Art. 5.2.3) ○ Failure to comply with a code of conduct, which was voluntarily signed by the trader, if the trader informs, as part of his/her commercial practice, that he/ she is bound by the code of conduct (Art. 5.2.4)
Article 5.3	In particular, a misleading action may concern issues such as (Art. 5.3 UCPA):

¹ Note re linked EN translation: <http://www.g-regs.com/downloads/POGenTransUCPAnote.pdf>

² Article 2.7 UCPA: 'transactional decision' means any decision taken by a consumer concerning whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product, or to exercise a contractual right in relation to the product, as well as whether the consumer decides to act or to refrain from acting.

³ CASE 1. Decision of the President of the UOKiK no. RWA-44/2012. PO: https://decyzje.uokik.gov.pl/bp/dec_prez.nsf

Telecoms company Polkomtel Sp ran advertising which promised a price of 0.29 PLN per minute for all calls. However, the cost per minute to one telecom service provider was higher. The information concerning this one exception was illegible for the average consumer in the TV commercial and thus it was capable of making him/ her take a transactional decision that he/ she would not have taken otherwise. The illegibility of the inscription resulted from the colour and size of the fonts employed, while the v/o did not mention the exception. The same ad on a billboard had no information on the exception. The internet ad was held not be misleading as a link with all the information was provided.

CASE 2: Decision of the President of the UOKiK nr DDK 14/2008 PO: https://decyzje.uokik.gov.pl/bp/dec_prez.nsf

Involved Centertel, a mobile phone network operator now known as Orange Poland. It used a slogan 'Closeness creates Christmas. Calls for free with your closest ones' It was presented during Christmas and was specifically referring to Christmas by the use of Christmas symbols; the main service (calling for free), however, was switched off during the holiday season. Ruled as misleading action because the essential information regarding the fact that the free of charge calls, considered as the main emphasis of the ad campaign, would not be provided during Christmas time. The fact that a consumer might have been informed of this fact at a later date, e.g. at the moment of sale, could not have changed the assessment as it suffices that a misleading advertisement raises interest for the offer. Re. whether the average consumer makes a transactional decision he would not otherwise have taken, it is irrelevant if the consumer decided to act or not.

⁴ EXAMPLE: The Polish Office of Competition and Consumer Protection acted against a trader who falsely claimed that its loans to consumers had the lowest interest rates on the market. In addition, the trader included incorrect information in advertisements by indicating that consumers would be granted loans regardless of their credit history. Decision No. RPZ 4/2015 https://decyzje.uokik.gov.pl/bp/dec_prez.nsf

- the existence, nature or availability of the product (5.3.1)
- the characteristics of the product, such as its geographical or commercial origin, quantity, quality, manufacturing process, composition, date of manufacture, fitness for purpose, capabilities and expected results of its use, additional equipment, tests and the results of tests or checks carried out on the product, licences, awards or honours obtained by the product, and the risks and benefits associated with the product (5.3.2)
- Obligations of the trader in connection with the product, including service and complaint procedures, delivery, necessary services, parts, replacement or repair (5.3.3)
- Consumer rights, in particular the right to have the product repaired or replaced with a new one or the right to a price reduction or to withdraw from the contract (5.3.4)
- The price, the manner in which the price is calculated, or the existence of a specific price advantage ⁵(5.3.5)
- The nature of the sale, the reasons why the trader applied commercial practices, declarations or symbols in relation to direct or indirect sponsorship, information on the economic situation or legal status of the trader or of its representative, including its name (s) and assets, qualifications, status, licences held, membership or relationships, intellectual and industrial property rights and awards or honours (5.3.6)

Article 5.4

While assessing whether a market practice constitutes a misleading action, all its features as well as the circumstances accompanying the product launch, including overall presentation, should be taken into account (Art. 5.4 UCPA)

Misleading Omissions

Article 6.1

A commercial practice will be regarded as misleading by omission if it omits material information⁶ that the average consumer needs to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he/ she would not have taken otherwise.

Material information is deemed to be the information that a trader applying a commercial practice is required to provide consumers on the basis of separate provisions.

Article 6.3

An omission will also be regarded as misleading when the trader:

- hides or provides in an unclear, ambiguous or untimely manner such material information
 - fails to disclose the commercial purpose of the practice if this is not clearly apparent
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⁵ Example: In the case of free trials - providing information about the true costs of free trial offers in an unclear manner may be contrary to Art. 5.3.5. A telecom operator in Poland advertised on billboards that consumers could receive either two tablets or one mobile phone and a tablet for the price of PLN 1, -. However, the trader did not clearly inform consumers that, in order to take advantage of this offer, they would have to sign both a subscription contract for 24 months and a purchase contract for the products with 36 monthly instalments. The Polish Office of Competition and Consumer Protection found this advertising misleading within the meaning of Article 6(1)(d) of the UCPD (or Art. 5.3.5 UCPA)

Decision No: RBG 32/2014 https://decyzje.uokik.gov.pl/bp/dec_prez.nsf

In addition, if a trader does not make it clear to consumers that they may enter into subscriptions by signing up to a free trial - he may also infringe Articles 6.1, 6.3, 6.4.1 or 6.4.3 (in the case of an invitation to purchase) of the UCPA by omitting material information. Depending on the circumstances, there may also be an infringement of Article 5.3.1 UCPA

Source p.81: http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf

⁶ Material information is deemed to be the information that a trader applying a commercial practice is required to provide consumers on the basis of separate provisions (Art. 6.2). Article 7 (5) of the UCP Directive indicates that information requirements established by Community law in relation to commercial communication including advertising or marketing, in the form of a non-exhaustive list contained in Annex II to the Directive, shall be regarded as material. The Polish Act – Art. 6 (2) above - instead refers to other provisions setting out information requirements, which themselves are often the national implementations of the EU rules indicated in Annex II UCPD: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:en:PDF>. Note: The information requirements from Article 12 (Chap 3) of the Consumer Rights Act <http://www.gregsregs.com/downloads/POActConsumerRightsEN.pdf> (EN) and in Article 9 of the Act on the provision of electronic services <http://www.gregsregs.com/downloads/POActProvisionElectronicServices.pdf> (EN) will qualify as material information under Art. 6.2 (based on p. 81 http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf). The Polish Office of Competition and Consumer Protection acted against a trader who offered life insurance products without including material information in the advertising. The trader claimed that the relatives of a person covered by the insurance would obtain all insurance benefits if that person died. However, the trader omitted to inform consumers that if the person died within the first 24 months of the contract for reasons other than an accident, the relatives would only receive limited insurance benefits. Decision No [DDK 7/2014](https://decyzje.uokik.gov.pl/bp/dec_prez.nsf) by the Polish Office of Competition and Consumer Protection

from the circumstances and if this causes or may cause the average consumer to take a transactional decision which he/ she otherwise would not have taken.

Article 6.5 When assessing whether a market practice is misleading by omission all its features and circumstances related to the product launch, including its overall presentation, should be taken into account.

Article 6.6 Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether information has been omitted.
