

Full title of law or regulation

The Act on Combating Unfair Commercial (Market) Practices (UCPA)

PO: <http://isip.sejm.gov.pl/DetailsServlet?id=WDU20071711206>

EN¹: <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 Commercial Practices regarded as unfair commercial practices in all circumstances. Article 7 UCPA). *Of the 23 misleading commercial practices, we have listed only those most relevant to marcoms*

Article 7 extracts

- Provision of information by a trader to the effect that he/ she has undertaken to respect a code of good practice, if this is not true (Art. 7.1);
- Using a certificate, quality mark or equivalent without being authorised to do so (Art. 7.2);
- Claiming that a code of conduct has an endorsement from a public or other body which it does not have (Art. 7.3);
- Claiming that (Art. 7.4):
 - a. The trader has obtained appropriate authorisation from a public or private body,
 - b. The commercial practices or product have been endorsed, approved or otherwise authorised by a public authority or private entity - when it does not meet the necessary conditions to receive such endorsement, approval or other authorisation
- Bait advertising, which involves making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he/ she will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (Art. 7.5)
- Bait and switch advertising, which involves making an invitation to purchase products at a specified price, and then refusing to show the advertised item to consumers or refusing to take orders for the product or to deliver it within a reasonable time, or demonstrating a defective sample, with the intention of promoting a different product (Art. 7.6)
- Stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity to take an informed choice (Art. 7.7)
- Stating or otherwise creating the impression that a product can legally be sold when it cannot (Art. 7.9)
- Presenting rights given to consumers in law as a distinctive feature of the trader's offer (Art. 7.10)
- Advertorial, which involves using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (Art. 7.11)
- Presenting incorrect information concerning the nature and extent of the risk to the personal security of the consumer or his/her family if the consumer does not purchase the product (Art. 7.12)
- Promoting a product similar to a product made by another manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not (Art. 7.13);
- Claiming that the purchase of a product is able to facilitate winning in games of chance

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

(Art. 7.16);

- Claiming that a product is able to cure illnesses, dysfunction or malformations when it is not (Art. 7.17);²
- Passing on unreliable information concerning market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than market conditions (Art. 7.18);
- Claiming in a commercial practice to offer a competition or prize promotion without awarding the prizes described or a reasonable equivalent (Art. 7.19);
- Presenting a product as 'gratis' (*gratis*), 'free' (*darmowy*), 'without charge' (*bezpłatny*) or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item (Art. 7.20);
- Including in marketing material an invoice or similar document suggesting an obligation of payment which gives the consumer the impression that he has already ordered the marketed product when he/ she has not (Art. 7.21);
- Claiming or otherwise creating the impression that the trader is not acting for purposes relating to his business or professional activity, or falsely representing oneself as a consumer when it is not true (Art. 7.22).

Aggressive Commercial Practices

Article 9 extracts

Aggressive Commercial Practices regarded as unfair commercial practices in all circumstances. *Of the blacklist of 8 aggressive commercial practices, we have only included those most relevant to marcoms*

- Making persistent (*lit.* oppressive/ obtrusive) and unwanted (not resulting from/ caused by the consumer's action or omission (i.e. failure to act) solicitations by telephone, fax, email or other remote media to persuade consumers to purchase goods, except, in circumstances and to the extent justified under the law, to enforce a contractual obligation (Art. 9.3)
- Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them (Art. 9.4)
- Creating the impression that the consumer has already won, will win unconditionally, or will win on taking a particular course of action, a prize or other equivalent benefit, when in fact claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring other costs (Art. 9.8)

Criteria: Aggressive Commercial Practices

Article 8

- A commercial practice shall be regarded as aggressive if, by undue influence³, it significantly impairs or is likely to impair the average consumer's freedom of choice or conduct with regard to the product and thereby causes or may cause him/her to take a transactional decision which he/she would not have otherwise taken (Art. 8.1 UCPA)
- When assessing whether a commercial practice is aggressive, all of its elements and the circumstances of the marketing of the product should be taken into account, and in particular:
 1. The time, place, nature or nuisance value of the practice;

² Example case: The Polish Office for Competition and Consumer Protection ruled that claims that a massage armchair had healing effects on human health (including curing spine and blood circulation diseases) fell under the ban imposed in point Art. 7.17 UCPA. Decision of the President of the Office for Competition and Consumer Protection, Ref. RPZ 2/2012 "ZdroWita" of 13 March 2012 https://decyzje.uokik.gov.pl/bp/dec_prez.nsf

³ All types of advantage used towards consumers shall be regarded as undue influence (i.e. any form of exploitation of a position of power in relation to the consumer), particularly the use or a threat to use physical or psychological force in a way that significantly impairs the average consumer's ability to make an informed transactional decision. (Art. 8.2 UCPA)

2. Deliberate exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's ability to make an informed transactional decision;
 3. Any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader;
 4. Any threat to take any action that cannot legally be taken or the use of abusive language or behaviour.
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