

Abuse of Position by an Entrepreneur

Unfair Commercial Practices in Online Shopping from the Perspective of Inspections by the Czech Trade Inspection Authority

Abstract

The diploma thesis addresses the issue of unfair commercial practices employed by operators of online e-commerce marketplaces, with a particular focus on inspections conducted by the Czech Trade Inspection Authority.

The theoretical part of the thesis is presented in the first three chapters. The first chapter defines the legal framework of the regulation of unfair commercial practices, with particular emphasis on the comparison of the European legislation to its implementation into Czech law.

The second chapter provides a description of the Czech Trade Inspection Authority, including its organizational structure, scope of authority, and powers. Moreover, this chapter delineates the scope of the inspection procedure of the Czech Trade Inspection in the field of e-shops. In formulating her conclusions, the author draws not only on the legal provisions governing the subject matter within administrative supervision, but also on the reasons of particular decisions issued by individual inspectorates of the Czech Trade Inspection. Moreover, the chapter also provides details of the Czech Trade Inspection's course of action in the offence procedure, in the event of the identification of any legal violations of the law during the inspections.

Chapter three is devoted to the definition of the concept of unfair commercial practices. The chapter provides an explanation of the term unfair commercial practices, categorizes them into the so-called large general clause and small general clauses, with particular emphasis on selected unfair practices from the blacklist. Furthermore, the author examines the criteria used to determine whether a specific conduct should be regarded as an unfair commercial practice or not. Additionally, the chapter compares unfair commercial practices to unfair competition.

The practical part of the thesis, presented in the fourth chapter, analyses the decision-making processes employed by individual inspectorates of the Czech Trade Inspection in specific cases. The aim of this analysis is to assess whether the sanctions imposed by the Czech Trade Inspection are sufficiently noticeable for the entrepreneurs and thus whether they are effective. In order to reach such a conclusion, the author evaluates their intensity *ex ante* (i.e., in the manner inspectors should determine the amount of the sanction) as well as their effectiveness *ex post* (i.e., whether the operators of the online shops who have been sanctioned have rectified their wrongdoing).

A further question addressed in this thesis is whether inspectorates make consistent decisions in similar cases, thereby ensuring compliance with the principles of legal certainty and legitimate expectations. To address this issue, the author compares the practice of different inspectorates, using the amount of each fine imposed and the number of offences for which an entrepreneur was sanctioned as the basis for the comparison.