



Selected Unfair Business Practices in the Time of COVID-19 Pandemic

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Abstract

Objectives: One of the main objectives of the paper is to present and describe some unfair and unethical business practices in the health sector during the ongoing pandemic.

Research design & methods: The Authors conducted a comparative research study using public reports, administrative proceedings and national legislations.

Findings: The study revealed that the described malpractices and misconducts occurred on examined markets intensified during the pandemic. Some of them happened for the first time on this occasion.

Implications/Recommendations: The public governances and other competent organs should continue their supervisory activities and public information and education campaigns in order to highlight the frauds and unethical conducts that occur and will occur on the market.

Contribution/Value added: The Authors decided to conduct their research on this specific topic not only because it constitutes a particularly relevant issue in this critical time, but also because there is a lack of such comprehensive and comparative presentation of the unethical and deceitful practices that took place in the public health sector due to the spread of COVID-19.

Article classification: research article

Key words: unethical conducts, health sector, consumer protection, COVID-19, unfair business practices

JEL classification: I18; K19

Introduction

As the new virus spread across the world, many traders found a new way to gain some extra profits through unethical, aggressive and illegal practices.

In other words, one could say that the rapid spread of the SARS-CoV-2 virus is accompanied by the rapid spread of numerous, ever-rising scams and abusive practices aimed at deceiving a vast range of worried and anxious people. The pressure selling techniques of various products and services can not only be overwhelming and confusing, but they can, and very often they do in fact, be dangerous and harmful to many consumers. Many traders by generating false pressure and disorientation tend to deprive consumers of the sufficient time to make a sound and informed purchasing decision.

In this particular period of persistent uncertainty, it is very easy to fall into the trap and to be fooled by unethical practices and false, unrealistic, 'healthcare' promises made by dishonest professionals.

Due to the spread of COVID-19 around the world, many of us are concerned about our and our families' health and life. In this arduous moment we are particularly susceptible to be fooled by manipulating advertising claims regarding dreamlike treatments, medications, medical and non-medical devices that would be able to 'help', 'provide relief', 'prevent', 'protect against', 'diagnose', 'cure', 'combat' the SARS-CoV-2 virus (COVID-19) or its side effects.

Rogue vendors promise or even guarantee the extraordinary, magical effects of their offered products or services. To do so, they make use of various deceptive, misleading or even aggressive sales strategies, such as 'right here and right now', 'the unique opportunity', 'special discount', and so on. They exploit the customer's altered judgment skills caused by fear and anxiety about the ever-increasing number of infected people and the risk of death.

The misleading advertisements may use false certificates, licenses or endorsements (through a logo or name) from medical professionals, experts, celebrities, national or international institutions or government agencies, academic reviews, scientific results or articles.

Some groups of people are more vulnerable than others because of their age, illiteracy, health problems, naivety, lower resistance to pressure, and so forth. Nevertheless, anyone could be a victim. Therefore, the issue is greatly relevant and even very dangerous in certain cases.

These practices may take place on the Internet (so-called online scams) or in the storefronts and may concern different kinds of products or services. For these reasons, special attention should be paid to all information, claims and products' features provided by traders, as they may not only be 'innocent', ineffective or unnecessary, but also fake or even dangerous to our life or health.

We must be aware that currently there is "no scientific proof that any food or food supplements can cure or prevent COVID-19 infections" [1].

As it will be illustrated, there are a wide range of fraudulent behaviours that have occurred and still occur in almost every single country. However, the present paper focuses on only a few selected countries, in particular Poland and Italy.

The 'Covid-19 unfair practices'

This section briefly describes some kinds of deceitful practices of dishonest professionals that occurred during the last year of the pandemic. It aims also at presenting some selected important measures taken by the national competent authorities in order to combat these dishonest and abusive conducts and behaviours.

The particular attention is paid to the Italian Antitrust Authority (*Autorità Garante della Concorrenza del Mercato*, AGCM) and the Polish Competition Authority (*Urząd Ochrony Konkurencji i Konsumentów*) that supervise and enforce national laws and other sectoral regulations regarding unfair commercial practices and misleading advertising.

As it has been reported by the Advertising Standard Authority of New Zealand, advertising claims regarding COVID-19 can be actual or implied.

Actual claims, such as "this product helps treat the symptom of COVID-19 infection" are generally obvious to customers.

The implied assertions are less obvious. Implied claims can be present in advertisings through the use of words, phrases, sound and imagery (or a combination of these) such that a consumer who views or hears the advertisement draws the conclusion that the claim is related to

COVID-19. For example, “this product will help protect you from the currently circulating viruses and other bugs” [2].

- The ‘Wish’ platform

The investigation [3] lunched on 31 March 2020 by the Italian Authority, AGCM, was referred to the sale of the products for “the prevention of contagious from” [4] the COVID-19. The products in questions were the FFP2 masks, mask and gloves explicitly promoted as ‘anti-coronavirus’, a special *test* kits [5] to self-diagnose the presence of the virus. However, after the intervention of AGCM, the professionals responsible for the platform have adopted new policies, which satisfied the Authority.

- Tiger Shop

On 8 April 2019 the AGCM opened an investigation [6] against Tiger Group S.r.l., a company present on the Italian market. In this case, the Authority adopted a special *interim* measure, ordering the suspension, of the advertising and sale of the FFP2 category protective masks on the online shop ‘tigershop.it’. The advertised products were considerably different from those that consumers received. The products did not possess all the advertised properties; there was no proof of the vaunted certification. They were offered at high prices and with claims, such as “the last pieces available”, moreover the actual delivery time was significantly longer than the one promised by the trader on his website (24/48h). For these reasons, the practices in question were likely to mislead a large number of consumers, and therefore, in the light of the gravity of the infraction and the urgency, the adoption of the urgent measure (the suspension) was considered essential.

- Oxystore.it [7]

The practices in question consisted of the advertising of products for oxygen therapy that claimed unproven antiviral and anti-COVID-19 capabilities. The website contained suggestive claims about the ability to combat COVID-19 by promoting oxygen therapy as one of the most effective solutions for treating symptoms associated with the

Coronavirus. The trader attempted to sell ‘prevention kits’ [8] designed by ‘Oxystore’ for 995 euros and to exploit consumers’ fear through exaggerating descriptions about the sanitary situation. The AGCM found the advertisements and claims to be misleading and false. They were highly susceptible to induce consumers into believing that the Oxygen Therapy, through the oxygen concentrator, would be able to prevent the Coronavirus⁴. In addition, the professional did not include any information about the possible risk or collateral effects of using of the product. In consideration of the gravity of the infraction, the Authority ordered the immediate elimination of any reference to the preventive and therapeutic efficacy of the advertised products against COVID-19.

- *Kaletra* drug

This is a case of the promotion and marketing of an antiviral drug [9] for the treatment of HIV infections (sold exclusively on medical prescription). Kaletra “was advertised as a product with proven effectiveness against coronavirus and offered at a price of about 384 euro for the small pack or 659 euro for the large pack” [10]. The Italian Authority ordered the immediate suspension of the promotional practices because of the illegal, misleading and aggressive conducts of two online pharmacies.

- *Amantadyna* drug

A similar case has also occurred in Poland, where some public individuals, such as Vice Minister of Justice [11] have informed about positive effects of the drug called Amantadyna (Amantadine). This drug is generally used to treat the *Influenza A* virus and Parkinson’s disease. However, the alleged good effects of Amantadyna for the treatment of the Coronavirus were first affirmed by a doctor from Przemyśl – Włodzimirz Bodnar.

The issue is particularly serious and potentially dangerous because there is no scientific evidence of Amantadine’s ability to cure the Coronavirus. It becomes even more relevant when the affirmations come from a specialist. This case not only triggered a public discussion among

4. Similar situation occurred in the case of marketing and selling of the drug called ‘Kaletra’.

experts, but it has also involved the Office of Professional Liability in Kraków which is an organ of the Supreme Medical Chamber (*Naczelna Izba Lekarska*). Moreover, a resident of Przemyśl submitted a notification to the Public Prosecutor's Office in Przemyśl accusing, *inter alia*, doctor Bodnar, the National Health Fund (*Narodowy Fundusz Zdrowia*), the Sanitary Inspector of Przemyśl, the Supreme Medical Chamber and others of conscious endangering the lives and health of citizens due to their inertia regarding the potentially dangerous statements about Amantadine provided by doctor Bodnar⁵.

- 'Covid fees'

It is worthy stressed, that not only unfair conducts of dishonest professionals may be detrimental to consumers, but there are also many other circumstances related to trustworthy subjects and professionals, such as pharmacies that rapidly increase the prices of some specific products (i.e. protective masks and other devices, medications, vitamins, food supplements, sanitizer products) or doctors, dentists, etc., by increasing the prices for their services, so-called additional service fees, or 'Covid fees'⁶.

- Exploitative wholesale pricing for hospitals

In February, two wholesalers terminated the contracts with hospitals for the supply of personal protective equipment to subsequently obtain higher prices for the same products.

Thus, these were not just the sudden price increases for specific products sold to hospitals, but a deliberate practice of withdrawing from contracts in order to fix prices. The increased prices appeared without any objective justification. For this reason, the intervention of the Polish Competition Authority was justified.

As the President of UOKiK stated, these practices are "not only shameful, but also contrary to the law" [12]. Moreover, the questioned action may violate not only the consumer and competition laws, but also

5. For more detailed information see <https://korsosanockie.pl/wiadomosci/doktor-wlodzimierz-bodnar-oskarzany-przez-mieszkanca-przemysla-jest-zawiadomienie-do-prokuratury/nfYSKX7SHT14MPzkUwqQ>.

6. As an example, see https://www.uokik.gov.pl/news.php?news_id=16459&news_page=8.

the Polish “Penal Code provisions by causing a state of widespread danger to life or health” [12].

- Vaccine Lottery in Germany [13]

The case regards vaccination in at a nursing home Frankfurt, where a ‘lottery’ was organised among the patients in order to identify who and when should receive a coronavirus vaccine. The case was reported on Twitter by Lutz Stroppe, former Secretary of State of the German Health Ministry.

As we could note, there are several kinds of unlawful, unfair and dishonest practices that have occurred, are occurring and may still occur in the next days and months.

They mislead, confuse and scam many consumers, abuse their trust and exploit the (medical) illiteracy of many of them. Sometimes they are exaggerated, emphasising false qualities, rising and/or promising unrealistic expectations and effects. They play on the consumer’s fear in these particularly unpredictable times.

The measure to be taken shall be decisive but also carefully balanced because; as it has been noted by OECD “bringing excessive pricing cases in a crisis also comes with risks. Interventions aimed against price increase can lead to diversion of products to the places where prices are not regulated, and hence allowed to increase” (OECD, 2020, p. 4).

‘Anti-Covid’ movements

Another highly dangerous, ever-growing problem is the proliferation of various groups that attempt to negate the existence of COVID-19 or the use of protections, such as ‘no masks’, ‘no vax’, and so on.

These movements generate much fake news. Thus, readers are provided with harmful conspiracy theories [14]. They falsely claim that wearing protective masks can be harmful to our health, or encourage people to ignore social distancing, and so on.

They believe that situations and events that are difficult to understand are secretly planned and manipulated by some powerful forces. Conspirators offer explanations, ignore scientific evidence, provide evidence that fits and supports their theories. “They falsely suggest that nothing hap-

pens by accident and that there are no coincidences” [14]. Due to the fast-moving information environment, fake news and conspiracy theories are spread very quickly through many different communication channels, such as social networks, blogs, radio, TV, forums, and can come from various sources, such as friends, family members, colleagues, some specialists and professionals (i.e., actors, politicians or even doctors with different opinions). These practices can have serious consequences in the society, especially when they come from potentially trustworthy people.

As it has been stated by the Director-General of UNESCO: “Conspiracy theories can cause real harm to people, to their health, and also to their physical safety. They amplify and legitimize misconceptions about the pandemic and reinforce stereotypes which can fuel violence and violent extremist ideologies” [15].

One of the most recent dangerous cases occurred in the USA [16], where a pharmacist, employee of a hospital in Wisconsin, have manipulated and damaged over 500 doses of coronavirus vaccines at the hospital (by leaving them outside the refrigerator for many hours). He believed the vaccines could be harmful to humans and capable of altering their DNA, leading to “the end of the world”. He was arrested and accused of endangering safety and damages to property.

Consequently, as we can see, the spread of fake news may produce many different effects, from sudden price increases for products and services, misleading marketing and the sale of ‘magical’ products, to the proliferation of false and conspiracy theories that can greatly endanger the public health sector.

In many countries there are guidelines and advice⁷, warnings, and even Browser extension⁸ regarding false news, statements, unverified claims, and misleading contents. However, there is evidence that the spread of misinformation is also so by computer-controlled robots (so called Bots) [17, 18]. In this matter, BigTech companies and other website providers

7. See https://ec.europa.eu/info/sites/info/files/live_work_travel_in_the_eu/unesco-conspiracy-english-1.jpg; Polish project called ‘FakeHunter’ [<https://fakehunter.pap.pl>]; Italian project called ‘Cartesio’ [<https://cartesio.news>].

8. As an example, see NewsGuard [<https://www.newsguardtech.com/>].

must take immediate and appropriate actions in order to remove the false information and, if possible, ban the fake content suppliers.

Conclusions

Thus, as we could note, there are many practices which are able to induce consumers (already significantly conditioned by the current emergency), to purchase products on the basis of the belief generated by misleading or false advertisements. It must be emphasised that therapeutic and health advertising is very important as consumers often rely on such products, devices and services for their health and well-being⁹.

Practices that exploit the anxiety and fear of the consumers to induce them to purchase the advertised products must be promptly banned and punished.

Consumers have to keep in mind that, in accordance with the legal provisions, such as Unfair Commercial Practice Directive¹⁰ and national legislations, no claims are allowed which imply that a product has characteristics or functions that it does not have.

Moreover, making false affirmations that a product is unique or that a quantity is limited, such as ‘last pieces’, ‘only available today’¹¹ and so on, in order to push customers into buying it quickly is another unethical plot.

In such situations, consumers should report misleading, deceptive or false claims and advertisements directly to the online platform or to the consumer protection authorities. There is also a specific tool called ‘Safety Gate’¹² provided by the European Commission that can help identify dangerous non-food products found in European Union countries. It also

9. In accordance with the Principle 1 of the Therapeutic and Health Advertising Code of New Zealand.

10. As an example, ‘Falsely claiming that a product is able to cure illnesses, dysfunctions or malformations’ No. 17 of Annex I (so-called ‘blacklist’) of the Unfair Commercial Practices Directive.

11. No. 7 of Annex I (so-called ‘blacklist’) of the Unfair Commercial Practices Directive prohibits in all circumstances to state that a product is only available for a very limited time when it is not true.

12. https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.listNotifications&lng=en.

provides information on the risks and the measures taken by national competent authorities in order to prevent or restrict the marketing and sale of dangerous goods.

Moreover, consumers should be cautious about believing every information, statement and theory present on the Internet, including those shared by family or friends. We should verify the real source and the reliability of claims before sharing them with others to prevent the spread of fake news. Special attention should also be paid to dangerous public affirmations made by specialists who induce consumers to cure the Coronavirus by their own by assuming medications developed and prescribed for a different infection or virus.

Thus, as it has been reported, there are many actions taken at European and national levels aimed at stopping scams and tackling unfair commercial practices. Nonetheless, consumers should try to self-assess the risks and protect themselves by being more cautious and paying more attention to advertising, various claims, terms and conditions of contracts and highly exaggerated statements.

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