

CONSUMER RIGHTS PROTECTION AND PROHIBITION OF UNFAIR BUSINESS PRACTICES WITH THE AIM OF IMPROVING CONSUMER NEEDS AND DEMANDS SATISFACTION

ABSTRACT: A characteristic feature of contemporary business and current trends in the market economy is primarily globalization, which has significantly enhanced the possibilities for expanding operations from one market to multiple markets, while simultaneously increasing competitiveness among business entities. Consumer protection in developed market economies is not a new topic; however, under the conditions of globalization, the transition processes of the economy in certain countries, and competitive relations in modern economic flows, this issue has attracted significant attention from the scientific and professional community in recent years. After the introductory section, this paper reviews the concept and significance of consumer satisfaction, specifically addressing the meeting of consumer needs and demands as an economically significant category essential for modern business practices. Furthermore, the paper focuses on the legal provisions related to consumer rights protection and the prohibition of unfair business practices. The concept of consumer protection is safeguarded by the Constitution of the

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Republic of Serbia, while consumer rights protection and the prohibition of unfair business practices are primarily regulated by the Law on Consumer Protection and the Consumer Protection Strategy for 2019-2024.

Keywords: *consumer protection, consumer rights, prohibition of unfair business practices, consumer satisfaction, Law on Consumer Protection.*

1. Introduction

A characteristic feature of contemporary business and current trends in the market economy is primarily globalization, which has significantly enhanced the possibilities for expanding operations from one market to several, while simultaneously increasing competitiveness among business entities. A crucial role in establishing desirable competitive positions for business entities is played by the consumer milieu, whose attitudes toward certain products or services can best be assessed through the degree of their satisfaction or dissatisfaction with the range of products or services offered. Hence, modern business in the context of globalization and a highly competitive market economy has led to the systemic adaptation of all business entities to the specific needs and demands of consumers.

When consumers are satisfied with the range offered by a business entity, it is highly likely that, over time, a special relationship will be developed between the consumers and the offered products and/or services. This relationship is characterized by consumer loyalty, wherein consumers will continually return to the products and services that initially satisfied them and met their expectations.

Along with other national economic goals, such as employment and economic growth, the quality of products and services is an integral part of the population's standard of living and a source of competitive advantage for individual business entities. Therefore, it is essential to understand the concept of meeting consumer needs and demands as a category by which business success is measured, as well as how the protection of consumer rights and the prohibition of unfair business practices, regulated by the Law on Consumer Protection (2021), can contribute to improving consumer needs and demands satisfaction and consequently, to better business results for business entities.

As the concept of meeting consumer needs and demands (referred to as consumer satisfaction in economic theories) "forms the basis for building good relationships between business entities and consumers and depends on the level of need satisfaction" (Leković & Marić, 2015, p. 60), the following

sections of this paper will delve deeper into the concept and significance of consumer satisfaction, followed by an examination of the legal provisions concerning consumer rights protection and the prohibition of unfair business practices.

2. The Importance and Definition of the Consumer Satisfaction Concept

Business entities that follow contemporary trends in their operations pay close attention to the conditions and consequences of business globalization, which primarily relate to “the possibilities of expanding operations into other markets and the risks of new competitors entering the domestic market” (Tešić, 2016, p. 21). Additionally, as a consequence of the rapid development of information and communication technologies, online shopping has become highly competitive in recent years, providing consumers with an easy way to acquire desired products, whether produced domestically or internationally. Moreover, “faced with a wide range of products and services that differ only slightly, consumers seek additional benefits that will help them make a purchase decision. When facing such a dilemma, what ultimately matters is their satisfaction with the range of products and/or services they have used” (Tešić, 2016, p. 22).

There are many definitions of consumer satisfaction, but they all share a common feature: consumer satisfaction arises from a relationship where comparison and evaluation occur. This evaluation is predominantly subjective and is assessed based on different perspectives of the author: “the level of expectations and perceived experiences” (Oliver, 1980, p. 461); “the surprise associated with purchasing and using a product/service” (Oliver, 1981, p. 27); “expectations and perceived performance levels of products/services, quality, and other outcomes” (Westbrook & Oliver, 1991, p. 85); “current quality and past satisfaction” (Anderson, Fornell & Lehmann, 1994, p. 63); “expected value and selected alternative” (Vranešević, 2000, p. 180); “anticipated satisfaction and purchased product or used service” (Shiv & Huber, 2000, p. 202); “a set of consumer/user requirements and the overall product/service” (Hill & Alexander, 2003, p. 30).

In essence, on one side, there is the expectation or situation that precedes the purchase and/or use of a product or service, i.e., the interaction with the business entity, while on the other side, this situation is compared with the obtained characteristics of the product and/or service, experience, or past satisfaction, i.e., consumer satisfaction.

The aforementioned definitions all share the view that satisfaction is developed through establishing relationships with consumers. Namely, by creating connections with consumers, business entities obtain the necessary information to provide them with greater satisfaction, thereby better fulfilling consumer needs and demands.

Principally, “it can be concluded that satisfaction is observed from two aspects: transactional and cumulative. In the transactional approach, the emphasis is on satisfaction after a decision has been made, and satisfaction is viewed as the result of a single transaction, such as purchasing or using a product or service from a business entity. In contrast, the cumulative approach involves tracking satisfaction over a longer period and encompasses the consumer, i.e., their satisfaction formed in all interactions with the business entity” (Anderson, Fornell & Lehmann, 1994, p. 54). Therefore, overall consumer satisfaction is considered. The cumulative approach in measuring consumer satisfaction is more complex and long-term, and therefore, it allows the business entity to manage the satisfaction mechanism over a longer period. The connection with consumers is reflected in repeat business (e.g., purchasing) with the business entity, thereby achieving greater consumer satisfaction, which positively influences the business performance of the business entity.

In theory, it is emphasized that “regardless of how satisfaction is viewed, all definitions share some common elements. When examined as a whole, three general components can be identified: consumer satisfaction is a response (emotional or cognitive); the response pertains to a specific focus (expectations, product, service, consumer experience, etc.); and the response occurs at a particular time (after using the service, after making a choice, based on accumulated experience, etc.)” (Ćirić & Klincov, 2008; Ćirić, 2011).

The primary goal “of any consumer-oriented business entity is to provide adequate satisfaction to consumers with their product range, which should ultimately lead to loyalty and positive financial results. Therefore, it is crucial for any business entity to understand the factors that lead to fulfilling consumer needs and demands. The factors most frequently mentioned in research as crucial include: perceived product/service quality, consumer expectations, product/service/company image, and perceived value” (Gronholdt, Martensen & Kristensen, 2000, p. 510).

It should also be noted that “the gap between what consumers expected from the product and/or service and their perception of them after using that product and/or service, should be as small as possible. To achieve this, the business entity must understand the essence of fulfilling consumer needs and

demands, which is reflected in the following: it is an active, dynamic process; it possesses a strongly expressed social dimension; meaning and emotions are integral components of satisfaction; the satisfaction process is context-dependent and contingent, encompassing multiple paradigms, models, and modalities; product satisfaction is connected with life satisfaction and the quality of one's own life" (Fournier & Glen Mick, 1999).

The highest level in meeting consumer needs and demands is represented by "TCS – Total Consumer/Customer Satisfaction. Numerous studies highlight achieving total consumer satisfaction as a prerequisite for the business success of business entities in the market. The concept of total consumer satisfaction means that "the product or service fully meets the consumer's needs and desires" (Maričić, 2011, p. 481). Some authors emphasize that "total consumer satisfaction is based on the total (overall) consumer experience, which encompasses the purchasing experience, consumption experience, and product replacement experience" (Best, 2009, p. 132).

Given the previously mentioned advantages that business entities can gain from satisfied consumers, it is clear that they benefit from a legal framework for consumer protection that contributes to achieving and improving consumer satisfaction. It is also important to note that consumer protection is a constitutional category, with the Constitution of the Republic of Serbia (2006) stating in Article 90 that "the Republic of Serbia protects consumers, and particularly prohibits actions directed against the health, safety, and privacy of consumers, as well as any dishonest market practices." Furthermore, the commitment of our state to improve the concept of consumer protection is demonstrated by the adoption of the Consumer Protection Strategy for the period 2019-2024 (2019). In the following sections, the provisions of the Law on Consumer Protection (2021) will be analyzed in the context of this paper's topic.

3. Legal Treatment of Consumer Rights Protection

According to Article 5, Paragraph 1 of the Law on Consumer Protection (2021), "a consumer is a natural person who purchases goods or services on the market for purposes not intended for their business or other commercial activities." Furthermore, "a product means any goods and services including immovable property, rights, and obligations, as well as, in the sense of the provisions of this law that regulate the liability for defective products, any movable property separated from or installed in another movable or immovable property, including energy produced or accumulated for the provision of light, warmth or movement"

A “producer” means an entity: (1) that produces or imports finished products, goods, raw materials, or parts in the Republic of Serbia for the purposes of sale, leasing, or other kind of trade, (2) that purports to be a producer by placing their name, trade mark or another distinctive sign on the goods, (3) trader of a product that does not contain information on the producer, if they fail to inform the damaged person in due time of the identity of the producer, or the entity from which the product was bought, (4) trader of an imported product that contains information on the producer, but not on the importer.”

It should be emphasized that “the rights and obligations of the buyer and seller from a sales contract are primarily the subject of the contract law, where the primary legal text is the Law on Obligations (1978). However, in situations where the buyer has the status of a consumer, the regulations of the Law on Consumer Protection are primarily applied in addition to these general regulations. The basic purpose of consumer law is to provide the consumer with a somewhat legally privileged position to equalize the real inequality of the parties in this relationship, where the trader is economically stronger, more knowledgeable, and has more information” (Protić, 2019, p. 8). Consumer protection is essential “for the improvement of the economy and society because it contributes to raising the quality of life of citizens. The general goal of consumer protection is to improve the quality of life for all citizens, to achieve and protect the fundamental rights and interests of consumers, to establish a system and institutions for consumer protection, and to create equal partnerships among all stakeholders in consumer protection” (Grandov & Đokić, 2009, p. 77). Consumer protection is “the practice of protecting buyers of goods and services who, due to a lack of caution and knowledge of their rights, encounter unfair business practices in the market” (Čuljak, 2021, p. 1).

According to Article 2 of the Law on Consumer Protection (2021), “the fundamental rights of the consumers are:

- 1) The right to satisfy the basic needs – accessibility to vital goods and services, such as foodstuffs, clothes, footwear and housing facilities, health care, education and hygiene;
- 2) The right to safety – Protection from goods and services that are dangerous to life, health, property, or to the environment, or the owning or use of which is prohibited;
- 3) The right to be informed – obtaining correct information required for a conscious choice from among the goods and services offered;
- 4) The right to choose – the possibility of choice between a number of goods and services, at accessible prices and with adequate quality;

- 5) The right to be heard – the observance of consumer interests in the process of the adoption and realisation of the consumer policy and the possibility to be represented through consumer organisations and their associations in the procedure of adopting and implementing consumer policy;
- 6) The right to redress – protection of the rights of the consumer, pursuant to the procedure provided by law, upon the violation of their rights and compensation for material and moral damage caused by the trader;
- 7) The right to consumer education – gaining the basic knowledge and skills necessary for making a proper and reliable choice of products and services, knowledge of the fundamental rights and responsibilities of consumers, and the ways in which such knowledge may be implemented;
- 8) The right to a healthy and sustainable environment – the right to live and work in an environment that is not harmful to the health and wellbeing of present and future generations, and the right to information necessary for assessing the risk to health and wellbeing from the existing environment.”

According to Article 3, Paragraph 1 of the same law, “the consumer may not waive the rights conferred by the provisions of this law,” while Article 6 stipulates that “unless otherwise provided by this law, the trader shall indicate in an unambiguous, clearly legible and easily identifiable manner, the selling price or unit price of goods and services, in accordance with the regulations that regulate trade”.

Article 11 of the Law on Consumer Protection (2021) stipulates that “the trader shall issue a bill for the paid goods or services to the consumer,” while the obligation to inform before concluding a contract is regulated by Article 12 as follows: “the trader shall provide the consumer with the following information in a clear and comprehensible manner, in Serbian: 1) the main characteristics of the goods or services; 2) the trading name, registration number, registered office address and the phone number; 3) the selling price or, if the nature of the goods/services is such that the selling price cannot be calculated in advance, the manner in which the selling price is to be calculated, as well as, all additional postal, freight and delivery charges and the possibility that such additional charges may be charged at the expense of the consumer; 4) the method of payment, the manner and time of delivery, the manner of execution of other contractual obligations; 5) the existence of legal

liability for non-conformity of the goods or services with the contract; 6) the manner of the submission of complaints to the trader, in particular the place of receipt and the manner the trader proceeds upon them, as well as terms related to exercising the rights of the consumers on the grounds of conformity; 7) when offering and selling technical goods, the availability of spare parts, connecting devices and similar parts, technical service, i.e. maintenance and repair service during and after the expiry of the period in which the trader is accountable for non-conformity with the contract, i.e. after the cessation of production and the import of the goods; 8) the conditions for the terminating the contract, if the contract is of indeterminate duration or is to be extended automatically; 9) the possibility of out-of-court dispute resolution.” The same article also regulates that “depending on the circumstance of a particular case or type of goods/service, before the conclusion of the contract, the trader shall inform the consumer on the following: 1) the duration of the contract; 2) the minimum duration of the consumer’s contract obligations; 3) the functionality, including applicable technical measures for the protection of digital content; 4) any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; 5) the existence and conditions for after-sales service and guarantees.”

According to Article 13, Paragraph 1 of the mentioned law, “the consumer shall not be obliged to pay any form of additional payments including postal charges and freight and delivery payments if the trader has not received the express consent of the consumer to the specific additional expenses in addition to the agreed remuneration for the trader’s main contractual obligation.” It is also important to note that the Law on Consumer Protection (2021) provides for the possibility of consumer education and information carried out by associations and federations, as stipulated in Article 15.

4. Legal Treatment of the Prohibition of Unfair Business Practices

According to the definition in Article 5, Paragraph 1 of the Law on Consumer Protection (2021), “business practice shall mean any act, omission, course of conduct or representation, commercial communication including advertising, by a trader, directly connected to the promotion, sale or supply of a product to consumers.”

Article 16 of the same law stipulates that “unfair business practices shall be prohibited. The burden of proof for not performing unfair business practices shall be on the trader.” The Law on Consumer Protection (2021) defines the

concept of unfair business practices in Article 17. Specifically, according to these provisions, “a business practice shall be regarded as unfair if: 1) it is contrary to the requirements of professional diligence; 2) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of an average consumer whom it reaches or to whom it is addressed to, or of the average member of the group when a business practice is directed at a particular group of consumers.”

The same article also states that “business practices that are likely to materially distort the economic behaviour of only a clearly identifiable group of consumers who are particularly vulnerable to the practice, or the underlying product, because of their mental or physical infirmity, age or credulity in a way that the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group.” Furthermore, misleading business practices and aggressive business practices are particularly considered unfair.

According to Article 18 of the Law on Consumer Protection (2021), misleading business practice is considered “misleading if the trader leads or could lead the consumer to take a transactional action they would not have taken otherwise, by providing false information, by creating a general impression or in any other manner, even when the information the trader provides is correct, if it deceives or could deceive the average consumer in respect of: 1) the existence or nature of the product; 2) the main characteristics of the product, in particular its availability, benefits, risks, execution, composition, accessories, aftersale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product; 3) the extent of the trader’s commitments, the motives for business practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product; 4) the price or the manner in which the price is calculated, or the existence of a specific price advantage; 5) the need for a service, part, replacement or repair; 6) the nature attributes and rights of the trader or his agent, such as identity and assets, qualifications, status, and ownership of industrial, commercial or intellectual property rights or awards and distinctions; 7) the consumer’s rights.”

According to the same article “a business practice shall also be regarded as misleading if the trader, taking into account all the circumstances of a concrete case, leads an average consumer to take a transactional decision that

they would not have taken otherwise, through: 1) any marketing of a product, including comparative advertising, in a confusing manner that makes it difficult to distinguish from other products, trademarks, trade names or other distinguishing marks of a competitor; 2) non-compliance by the trader with the commitments contained in the code of good business practice by which the trader has undertaken to be bound, if the rules of such code are binding and verifiable for the trader, as well as if the trader indicated in his business practice that he is bound by that code.”

Forms of business practices considered misleading business practices are exhaustively prescribed in Article 20 of the Law on Consumer Protection (2021).

Aggressive business practice, according to Article 21 of the mentioned law, “shall be regarded as aggressive if, taking into account all its features and circumstances, the trader significantly impairs or is likely to significantly impair the average consumer’s freedom of choice or conduct with regard to the product through harassment, coercion, including the use of physical force, or undue influence, and thereby causes, or is likely to cause the consumer to make a transactional decision that would not have been taken otherwise. Undue influence means exploiting a position of power in relation to the consumer to apply pressure, even without using or threatening to use physical force, in a way that significantly limits the consumer’s ability to make an informed decision.” The same article regulates that “in determining whether a business practice uses aggressive practices, account shall be taken of: 1) its timing, location, nature or persistence; 2) the use of threatening or abusive language or behaviour; 3) the conscious exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer’s judgment, in order to influence the consumer’s judgment; 4) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise the rights under the contract, including the rights to rescind a contract or to switch to another product or another trader; 5) any threat to take any action that cannot legally be taken.”

Forms of business practices considered aggressive business practices are prescribed in Article 22 of the same law.

It should be emphasized that “unfair business practices are prohibited before, during, and after the conclusion of a contract between the consumer and the trader. In other words, these legal provisions cover all phases of the indirect and direct relationship between traders and consumers” (Aleksandrić, Dobrić, Najčević, Popović & Tešanović, 2015, p. 8).

An interesting example of unfair business practice is taken from the practice of European courts and consumer protection bodies. For instance, “baiting consumers and other forms of deceptive advertising include advertising a special sales promotion in which certain products can be purchased at significantly reduced prices on specific days and at specific times, which constitutes prohibited baiting of consumers when the number of promotional products available is unreasonably limited. This would exist, for example, in the case of advertising that computers are discounted by 70% on a specific day at a particular store, only to later find out that there were only 5 computers available at that discount. However, if the trader can supply the product from alternative sources within a reasonable time, this is not considered deceptive advertising” (Aleksandrić et al., 2015, p. 30).

5. Conclusion

Consumer protection in developed market economies is not a new topic, but in the conditions of globalization, the transition processes of the economy in certain countries, and competitive relations in modern economic flows, this topic has attracted significant attention from the scientific and professional public in recent years.

The protection of consumers’ economic interests is carried out at both the European Union level and the national level of individual states. Legal and (if applicable) strategic framework at the national level provides significant support to the concept of consumer rights protection and the prohibition of unfair business practices. Furthermore, informing the public adequately and educating the consumer society are the foundations for understanding and implementing legal solutions in practice. In this context, the position of the Consumer Protection Sector of the Ministry of Internal and Foreign Trade of the Republic of Serbia is that compliance with laws and good business practices in this area is not only in the interest of the economically weaker or insufficiently informed party—the consumer—but also of traders who thus engage in fair competition in the market, leading to better business results, lower prices, and a higher level of product and service quality. It is also necessary to emphasize once again that consumer protection is a constitutional category, clearly demonstrating the state’s commitment to pursuing an active consumer protection policy and building a legal system in this area that corresponds to a modern democratic society.

As seen throughout this paper, the concept and significance of consumer satisfaction were examined first, i.e., meeting consumer needs and demands

as an economically significant category essential for modern business flows. Then, attention was focused on the legal provisions related to consumer rights protection and the prohibition of unfair business practices.

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ZAŠTITA PRAVA POTROŠAČA I ZABRANA NEPOŠTENE POSLOVNE PRAKSE U CILJU UNAPREĐENJA ZADOVOLJAVANJA POTREBA I ZAHTEVA POTROŠAČA

APSTRAKT: Karakteristično obeležje savremenog poslovanja i aktuelnih trendova u tržišnoj privredi jeste pre svega globalizacija koja je višestruko unapredila mogućnosti za širenje poslovanja sa jednog na veći broj tržišta, ali je sa druge strane uslovlila veću konkurentnost između privrednih subjekata. Pitanje zaštite potrošača u tržišno razvijenim privredama nije nova tema, ali je u uslovima globalizacije poslovanja, tranzicionih procesa privrede pojedinih zemalja i konkurentskih odnosa u savremenim privrednim tokovima, ova tema poslednjih godina privukla značajnu pažnju naučne i stručne javnosti. U radu je nakon uvodnog dela učinjen osvrt na pojam i značaj koncepta satisfakcije potrošača, odnosno zadovoljenja potreba i zahteva potrošača kao ekonomsko-privredne kategorije suštinski značajne za savremene tokove poslovanja, a potom je pažnja bila usmerena na zakonske odredbe koje se tiču tretmana zaštite prava potrošača i zabrane nepoštene poslovne prakse. Koncept zaštite potrošača je zaštićen Ustavom Republike Srbije, a zaštita prava potrošača i zabrana nepoštene poslovne prakse uređeni su prvenstveno Zakonom o zaštiti potrošača i Strategijom zaštite potrošača za period 2019-2024 godine.

***Ključne reči:** zaštita potrošača, prava potrošača, zabrana nepoštene poslovne prakse, satisfakcija potrošača, Zakon o zaštiti potrošača.*

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