



Ministry of Economic Development and Technology Republic of Poland



Secretary of State
Jacek Tomczak

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Dear Sirs,

In view of the fact that you, as Temu's sales platform (www.temu.com), offer, through the above-mentioned website and mobile application "Temu", services to customers from Poland, we, the Ministry of Development and Technology, address you with a request for clarification.

This issue pertains to your services provided to Polish consumers and customers, and, specifically, your adherence to the regulations governing consumer protection and e-commerce in Poland.

This includes Policies for informing consumers about prices and terms of transactions through e-commerce portals.

It is important to note that non-compliance with the regulations in force in Poland and the European Union by the platforms mentioned could lead to significant measures being taken to safeguard Polish consumers. In the most severe scenario, your inability to ensure an adequate level of protection for our domestic consumers may result in the suspension of your services in our market.

Currently, at the level of implementation of EU regulations into our national law, as well as at the level of domestic legal regulations, a whole series of legislative work is being carried out to increase the level of legal protection of Polish consumers. This work is being carried out by the Ministry of Development and Technology, among others. In the absence of full cooperation with national regulators on the part of digital platforms offering services to Polish consumers, and in the event that the risk of violating the rights of Polish customers continues to exist, we will be forced to introduce changes in the regulations preventing such platforms from offering services to Polish consumers, though, for example, so-called geoblocking.

According to Gemius Mediapanel data, in January 2024, the Temu app and www.temu.com portal were expected to reach 14.9 million real users in Poland, which would place these platforms among the top marketplaces used by Polish consumers. Meanwhile, according to the information obtained by the Ministry of Development and Technology and the analysis carried out on its basis, the practices of the Temu platform provider may constitute a multi-level violation of national and EU regulations on, among other things, consumer protection. It should be noted that these practices have already been the subject of reports and

complaints from both consumers and businesses to the President of the Office of Competition and Consumer Protection [UOKIK], Poland's regulatory body for the protection of consumer rights. Also, the information provided to the Ministry was referred to the Office of Competition and Consumer Protection for the institution to express its position.

Dear Sirs, in connection with the above, we request that you respond to the following allegations and information.

Failure to comply with the provisions of the so-called Omnibus Directive¹ as well as national laws implementing them.

Price reductions are applied to offers available to Polish consumers on the Temu platform. These discounts are presented both in the listing, on offer pages, on product cards, in the shopping cart/order summary, and in ads on social networks. The way price reductions are presented on the Temu platform contradicts current regulations, according to which, when announcing a price reduction, the lowest price of the goods that was in effect during the 30 days before the reduction was introduced should be made visible (the so-called "Omnibus Price").

In the offers available on the Temu platform, the "Omnibus price" is nowhere indicated.

The use of "countdowns" and the use of messages can create pressure on consumers.

Countdown timers are visible in many areas of the Temu platform interface, including a counter counting down the free delivery time for all orders. The said counter may mislead consumers about the actual duration of the free product delivery, thereby putting pressure on consumers. This is because, in fact, after the counter finishes counting down, it starts counting down anew for the next 24-hour free delivery period for all orders. Such misleading information on the actual duration of free delivery may force consumers to act under unreasonable time pressure.

In addition, there are messages throughout Temu's service heavy on eliciting haste, such as "Instant bargain" with a set deadline, "Hurry up! Over 377 users already have this product in their shopping cart", "Popular! Almost sold out." These messages should be classified as an example of deceptive interfaces, as they put purchasing pressure on the user. Such action has been classified as an example of a practice described as dark patterns by, among others, the UK regulator, as well as the European Commission.

No indication of a clear and specific price of goods.

For some of the products offered on Temu, vague terms are used regarding the price of the goods. When determining the price of a product, the platform operator uses an explanation: "We do not guarantee that the selected products will be available and at the quoted price by the time the payment is finalised." At the same time, by specifying the price of the product, the platform informs the user that it is an "expected" value. This form of communication of the price of goods may mislead consumers using the platform.

Improper reporting of minimum order value.

¹ The European Parliament and of the Council Directive 2019/2161 of November 27, 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council with regard to better enforcement and modernisation of EU consumer protection rules (Text with EEA relevance), Official Journal of the EU, L. 328/7.

The rules of the Temu platform provide for a minimum order value, i.e. the value from which an order can be placed. However, the consumer is informed that there might be a minimum order value for the given order only at the final stage of the purchase path, i.e. after clicking on the "place order" button. A message indicating the minimum order value will then appear on the user's screen if the order value is lower than the minimum set. According to the Ministry, this kind of information should be provided to consumers at the very beginning of the purchase path. The platform's solutions in this regard may also be an example of a practice known as dark patterns.

Use of misleading consumer communications regarding "coupons."

After downloading the Temu app, a set of "coupons" appears on the user's screen, along with a timer counting down to their expiration. Similar messages also appear after a specific time spent using the portal. These promotional actions, the nature of which is to suggest the randomness of winning and the randomness of the won prize, are communicated to users using Temu in the form of pop-ups that appear. The messages inform consumers that they can earn PLN 500, but at the same time, the platform does not communicate to users the conditions that allow them to use these funds. In addition, it should be noted that the terms of this promotional campaign contain a number of abusive clauses prohibited under Polish law concerning, among other things, the possibility of arbitrary cancellation, suspension or modification of any aspect of the promotion at any time and without notifying consumers. Also, the provision defining the jurisdiction of the law to the laws of the US state of New York is against the law in force in Poland.

Violations in marketing practices.

Violations of consumer rights are also evident in the way Temu sends commercial information to consumers. Even in the case where the customer using the platform has not consented to receive commercial information from the service, the platform repeatedly and intrusively encourages the customer to give such consent with pop-ups appearing on the screen talking about, for example, "exclusive coupons" and "amazing discounts." At the same time, contrary to the Terms of Service, users who have not previously given their consent to receive commercial information receive many notifications containing such content via the Temu mobile app, among others. Such a model of sending commercial information raises severe doubts on the grounds of the regulations in force in Poland: among others, the Act of July 18, 2002, on the provision of services by electronic means², the Act of July 16, 2004, Telecommunications Law³ and the EU GDPR Regulation⁴.

The illusive guarantee of price compensation, "price difference compensation within 30 days," and the illusive guarantee of available cash on delivery.

For many of the products available on the Temu platform, a "price difference compensation" guarantee is included. According to this guarantee, if the market retail price has decreased within 30 days of purchase, the consumer can claim a refund for the price difference.

In practice, products that are on sale, on promotion or unavailable are not eligible for price difference compensation, and the platform reserves complete discretion over changes to the program rules and their interpretation, or the group of products subject to alleged price

² Act of July 18, 2002 on the provision of services by electronic means, Journal of Laws of 2020, item 344.

³ Act of July 16, 2004, Telecommunications Law, Journal of Laws 2024, item 34.

⁴ Regulation 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), Official Journal of the EU L. 119/1.

difference compensation. Information about "price difference compensation" appears on the cards of discounted products (and therefore not eligible for such compensation) as one of the guarantees alongside "payment upon delivery" and "free returns," which misleads consumers. Also of an apparent nature is the "payment upon delivery" guarantee available in the platform's offers. In fact, it is only available for selected countries in the Arabian Peninsula and the Persian Gulf, which the consumer will only find out if you go into the details of this guarantee.

No information about whether the seller is an entrepreneur, about the division of responsibilities between the platform and the seller, and about the phone number and email address of the seller.

Despite the obligations expressed in Article 12a, items 2-3 and 4 of the Law on Consumer Rights, the⁵ provider of the Temu trading platform does not inform the consumer whether the third party offering the goods is an entrepreneur. As a result, there is no information about whether consumer protection regulations apply to their purchase, about the division of contractual responsibilities between the platform and the seller, and about the email address and telephone number where the consumer can quickly and efficiently contact the seller.

These deficiencies are a clear and unequivocal violation of the current Polish regulations.

Dear Sirs,

As justified above, we request that you provide a comprehensive explanation of the issues presented regarding the services offered through the Temu mobile application and the portal www.temu.com to Polish consumers. In particular, we expect explanations regarding the compliance of the services you provide with the provisions of the so-called Omnibus Directive, the GDPR Regulation and the following Polish normative acts: the Law on Consumer Rights, the Law on Provision of Electronic Services, and the Telecommunications Law. In addition, please also provide clarification on your policy against offering products on your platform that infringe on industrial property rights and intellectual property rights.

In Poland, we are open to cooperation with e-commerce service providers from all over the world. However, we expect all providers offering services to Polish consumers to fully comply with Poland's legal regulations. In view of the fact that your activities conducted through the Temu platform have become the subject of notifications and complaints to the Polish control authority, and the Ministry's analysis of your operating model has revealed a whole range of potential violations, we expect you to bring your operating model into compliance with the Polish law.

At the same time, we would like to express our expectation that, as a platform offering services to Polish consumers, you will establish a Polish representative office, which, in addition to providing Polish customers with proper legal and technical services, will be the appropriate institution to contact for Polish regulatory and legislative bodies. We also expect that in your operations, you will implement solutions enabling Polish consumers and other stakeholders to effectively report offers that infringe on industrial property rights and intellectual property rights, as well as on product safety. We would also like to point out that all of the above-mentioned issues are currently the subject of public debate in Poland, which will result in changes to the law imposing obligations on foreign e-commerce platforms aimed at increasing the level of protection of Polish consumers and the competitiveness of Polish entrepreneurs. In addition, we would like to remind you that you are obliged to take responsibility for paying the appropriate taxes (in particular, value-added

⁵ Act of May 30, 2014 on consumer rights, Journal of Laws 2023, item 2759.

tax) on transactions concluded through your platform. As the Ministry of Development and Technology, we are open to dialogue on this issue with all stakeholders, especially those who are willing to cooperate with Polish public authorities.

Kindest regards

Jacek Tomczak

Sekretarz Stanu

/ kwalifikowany podpis elektroniczny /