

## Case law

### Case Details

**National ID:** Court of Appeal, Dublin, Judgment 116

**Member State:** Ireland

**Common Name:** Aldi Stores (Ireland) Ltd & Anor -v- Dunnes Stores

**Decision type:** Court decision in appeal

**Decision date:** 06/04/2017

**Court:** Court of Appeal, Dublin

**Subject:**

**Plaintiff:** Aldi Stores (Ireland) Ltd & Aldi GmbH & Co KG

**Defendant:** Dunnes Stores

**Keywords:** comparative advertising; misleading marketing communication; misleading commercial practice; comparison of products; nature of comparison;

### Directive Articles

Misleading and Comparative Advertising Directive, [Article 2](#) Misleading and Comparative Advertising Directive, [Article 2](#) Misleading and Comparative Advertising Directive, [Article 3](#) Misleading and Comparative Advertising Directive, [Article 3](#) Misleading and Comparative Advertising Directive, [Article 4](#) Misleading and Comparative Advertising Directive, [Article 4](#)

### Headnote

In determining whether there was a breach of the European Communities (Misleading and Comparative Advertising) Regulations, 2007 and the Consumer Protection Act 2007, which transpose Directive 2006/114/EC in Irish law, in relation to the nature of the comparison of products, the correct test is whether the advertisements compare products meeting the same needs or that were intended for the same purpose, subject to the comparison not being misleading. As such, the products compared did not need to be identical, but substitutable or interchangeable.

Moreover, it is permissible to compare products on the basis of price alone, provided that the comparison is not outlawed as misleading.

### Facts

The case concerned comparative advertising between supermarket chains. Dunnes Stores ran an advertising campaign, from June to August 2013, which contained in-store shelf signage setting out Dunnes' prices and Aldi's prices, for items which Dunnes alleged were comparable. The campaign also included banners and floor stands, which contained advertising slogans such as "Lower price guarantee," "Guaranteed lower prices on all your family essentials every week," and the words "Aldi match".

At first instance, the High Court held that the in-store shelf labelling, banners and floor stands breached the European Communities (Misleading and Comparative Advertising) Regulations, 2007 and the Consumer Protection Act 2007. In assessing the advertising campaign, it determined that the Dunnes and Aldi products could not be compared on price alone as there were significant differences between them. Such advertisements needed to include a comparison of other relevant features of the products to be permitted.

Aldi appealed this ruling.

### Legal issue

The legal issue was whether comparative advertising carried on by Dunnes Stores was in compliance with the rules contained in the European Communities (Misleading and Comparative Advertising) Regulations (S.I. No. 774 of 2007), which transpose Directive 2006/114/EC.

### Decision

In overturning the decision of the High Court, the Court of Appeal concluded that the High Court had applied the wrong test when considering whether an advertising campaign was permissible under the 2007 Regulations. Importantly, it did not make a decision as to whether the 2013 campaign was lawful.

Three elements of Dunnes' comparative advertising campaign were at issue. The Court of Appeal overturned the High Court's finding that two of these elements (i.e. shelf edge labels stating the Dunnes and Aldi prices for specific products were comparable, and shelf edge labels carrying the slogans 'Lowest Price Guarantee' and 'Always Better Value') were contrary to comparative advertising law. The Court of Appeal held that the trial judge had proceeded because of a misunderstanding of the regulatory regime for comparative advertising and applied an incorrect test in assessing the legality of various aspects of the Dunnes campaign. In particular, the Court of Appeal held that the trial judge had combined two of the conditions of comparative advertising under the 2007 Regulations, namely Article 4(2)(c) and (d). Article 4(2)(c) which provides only products meeting the same needs or intended for the same purpose can be compared, whereas Article 4(2)(d) provides that a comparative advertisement must objectively compare one or more materials, relevant, verifiable and representative features of the products compared, which may include price.

The Court of Appeal held that both subparagraphs serve different purposes. Article 4 (2)(c) provides for what can be compared, and the products compared did not need to be identical but substitutable or interchangeable. In contrast, Article 4(2)(d) relates to how the comparison may be made. In this regard, the Court held that there is no requirement to specify all differences between products, and that it is sufficient to compare products on the basis of price alone, provided that the comparison is not outlawed as misleading, either pursuant to Article 3 of the 2007 Act, or as a 'misleading commercial practice' pursuant to the Consumer Protection Act 2007.

The Court of Appeal did, however, agree that the third element of the campaign, comprising Dunnes' banners and floor stands, which used the Aldi trademarks, were impermissible under the 2007 Regulations, but for a different reason than that found by the High Court. While the banners displayed the Aldi trademark along with the wording "Lower Price Guarantee" and "Guaranteed lower prices on all your family essentials every week", they did not involve any comparison with Aldi, and were therefore not a permitted form of comparative advertising under the 2007 Regulations.

URL: <http://www.courts.ie/Judgments.nsf/0/C2490635A7366D17802580FF00340637>

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### Related Cases

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### Legal Literature

No results available

### Result

Judgment in favor of the defendants allowing the appeal against the findings of the High Court. In setting aside the High Court's determination of a breach of the 2007 Regulations in relation to the in-store shelf labeling, the Court of Appeal found that the High Court had applied the wrong test when assessing the campaign. In light of its findings, the Court of Appeal set aside the injunctive relief granted to Aldi. Given that the advertising campaign concluded in 2013, the Court of Appeal has held that there should be no retrial of this matter.