

## Jurisprudence

### Informations concernant l'affaire

**ID national:** Court of Appeal Mons, Judgement 2018/RG/413/2020

**État membre:** Belgique

**Nom commun:** N/A

**Type de décision:** Décision de justice faisant l'objet d'un recours

**Date de la décision:** 16/09/2020

**Juridiction:** Court d'Appel Mons

**Objet:**

**Demandeur:**

**Défendeur:**

**Mots clés:** Unfair commercial practice, B2C, misleading statements, misleading action, misleading omission, average consumer, influence

### Articles de la directive

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7](#)

### Note introductive

An unfair commercial practice is deemed to alter the economic behaviour of the average consumer, the latter being reasonably well-informed and reasonably observant and circumspect. In advertising for and on the packaging of a cordless vacuum cleaner, the claim that it has an autonomy of 40 minutes is a factor that has a substantial impact on the purchase decision of the consumer.

### Faits

A producer of a cordless vacuum cleaner launches an advertising campaign indicating that the vacuum cleaner has an autonomy of 40 minutes which gives the consumer sufficient time to clean the whole house. A competitor claims that this is misleading information because the claimed autonomy of 40 minutes can only be realised in very specific circumstances (making use of accessories and functioning at the lowest speed) and that the autonomy of the vacuum cleaner under normal circumstances lasts between 7 to 25 minutes depending on the aspiration gear. In the view of this competitor, the fact that this additional information is not provided to the consumer constitutes also a misleading omission. The advertiser denied the fact that its advertising is misleading consumers and submitted that in that regard, the average consumer would consider the advertising as hyperbolic.

### Question juridique

Is the claim 'autonomy up to 40 minutes' for a cordless vacuum cleaner misleading? Must a claim stating that a cordless vacuum cleaner has "an autonomy of 40 minutes in normal function, which is sufficient to clean the whole house", be considered a misleading action? Is the fact that the claimed autonomy can only be realised in specific circumstances a misleading omission if this information is not provided to the consumer in the advertisement?

### Décision

The Court of Appeal decided that a claim which states that a cordless vacuum cleaner has an autonomy of up to 40 minutes is not misleading consumers. However, when the advertising gives the consumer the impression that the vacuum cleaner has an autonomy of 40 minutes when used in normal function and adds that this would be sufficient to clean the whole house, this concrete claim will have a substantial impact on the purchase decision of the consumer. If this autonomy can only be realised in very specific circumstances, the average consumer will be misled into believing that this vacuum cleaner has such an autonomy under regular circumstances. As the claim refers to one of the principal functions of the vacuum cleaner, the average consumer will believe the advertising and will not perceive the advertising as hyperbolic, given the concrete character of the claim. The advertisements are insufficiently nuanced and hence constitute misleading actions and misleading omissions. The Court of Appeal furthermore finds that the packaging which refers to 40 minutes autonomy is equally misleading. Although the first judge concluded that there was insufficient space on the packaging to provide information about the specific circumstances under which the autonomy could be realised, the Court of Appeal considers this information of such a vital nature that similar information available on the website of the producer could be included on the packaging. A simple reference to additional information available on the website of the producer is insufficient to correct the consumer's erroneous or misleading impression concerning the characteristics of the vacuum cleaner.

Texte intégral: [Texte intégral](#)

### Affaires liées

Aucun résultat disponible

### Doctrine

Aucun résultat disponible

### Résultat

The Court of Appeal confirms the decision of the first judge regarding the unfair commercial practices but reforms the first judgement stating that the packaging of a vacuum cleaner is sufficiently spacious to provide the consumer with essential information for their purchase decision. The judgement is important because it is one of the rare cases in which a Belgian court expressly refers to the impact of an unfair commercial practice on the economic behaviour of consumers. It is also important because it can be regarded as an application of the Canal Digital approach of the ECJ requiring traders to present essential information in the initial advertisement or on the packaging of the product sold.