

**Rechtsprechung****Rechtssachenbeschreibung**

**Nationale Kennung:** Supreme Court, Judgement 4 Ob 99/21v

**Mitgliedstaat:** Österreich

**Gebräuchliche Bezeichnung:** N/A

**Art des Beschlusses:** Beschluss des Obersten Gerichts

**Beschlussdatum:** 27/07/2021

**Gericht:** Supreme Court

**Betreff:**

**Kläger:**

**Beklagter:**

**Schlagworte:** advertisement, misleading advertising, comparative advertising

**Artikel der Richtlinie**

Misleading and Comparative Advertising Directive, [Article 7](#) Misleading and Comparative Advertising Directive, [Article 7](#)

**Leitsatz**

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A mature and reasonable consumer understands the advertising slogan "number 1" in a country not to mean the that company has a higher turnover than its competitors with only one product, but as a reference to the fact that the advertiser is the biggest and best supplier in the whole country, whose offer, sales and turnover far exceed those of its competitors.

**Sachverhalt**

The defendant advertises its deodorants with "stops sweating" and that they are "number 1" in Italy and Austria. Various studies are cited to substantiate these statements. Regarding perspiration, they prove a reduction of up to 50%. In terms of the "number 1" position, the Defendant's product in the Italian deodorant market had the highest annual turnover in each year from 2016 to 2020 but consistently lagged behind a product of the Plaintiff in terms of annual sales from 2018 to 2020. For Austria, the Defendant's market share by value was 23% higher than the second-ranked product in 2019 and 14% higher in 2020. Sales figures, as well as a leading position of the defendant's products on the entire Austrian deodorant market, do not result from the study referred to. The plaintiff requested that the defendant be prohibited from making both statements.

**Rechtsfrage**

The question was whether the statements of the defendant in the advertisement ("stops sweating", "number 1" in Italy and Austria) had a sufficient factual core so as to not be considered misleading.

**Entscheidung**

1. "Stops sweating": Although the claim "stops sweating" also has an exaggerated character, it nevertheless contains the factual core that the deodorant reduces perspiration to a considerable extent, which is at least close to completely stopping perspiration. With an actual sweat reduction of 25-50%, the claim is misleading. If there is an objectively verifiable factual substrate, an advertising statement is to be tested against the prohibition of misleading statements. In case of doubt, an advertising statement must always be understood as a serious claim, even if it exaggerates in the typical way an advertisement does.
2. "Number 1 in Italy and Austria": A mature and reasonable consumer understands the advertising slogan to be "number 1" in a country not to mean that the company has a higher turnover than its competitors with only one product but as a reference to the fact that the advertiser is the biggest and best supplier in the whole country, whose offer, sales and turnover far exceed those of its competitors. Therefore, it is not sufficient if the defendant had the highest turnover in Italy in the years 2016 - 2020, but lagged behind the plaintiff's products in terms of products sold. The same applies to the turnover in Austria. This may be higher than that of the competition, but this alone is not enough to advertise that they are number 1 in Austria and/or Italy.

Volltext: [Volltext](#)

**Verbundene Rechtssachen**

Keine Ergebnisse verfügbar

**Rechtsliteratur**

Keine Ergebnisse verfügbar

**Ergebnis**

The Supreme Court accepts the plaintiff's request and prohibits the defendant from making both allegations. It follows the second instance in this respect.