

Съдебна практика

Данни за случая

Национален идентификатор: Supreme Administrative Court, Judgement 8863/2021

Държава-членка: България

Общоприето наименование: N/A

Вид решение: Решение на върховния съд

Дата на решението: 26/07/2021

Съд: Върховен административен съд

Заглавие:

Ищец:

Ответник:

Ключови думи: misleading advertising

Членове от директивата

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

Уводна бележка

The statement "Fragrance. Made in France" is true if the fragrance used in the production of the perfume is of French origin, without the need for the perfume itself to be produced in France.

The statement about "author's perfumery" is true if the composition is composed by the person indicated as the manufacturer and the product is not purchased by him in ready form.

The claim that perfumes are an "alternative to the best price" of fragrances by world-famous designers is true if these products are of similar quality and lower price than world-famous products and no other actions have been taken to mislead consumers that they are buying products with world-renowned brands.

Факти

The perfume manufacturer Refan Bulgaria Ltd. submits a request to the Commission for Protection of Competition for the establishment of misleading advertising, applied by the perfume manufacturer "Bio Aroma" Ltd. and from the perfume trader Martinez Boutique Ltd. According to the applicant, the misrepresentation was expressed in the following allegations of the defendants:

- The inscription "Fragrance. Made in France", placed on the cardboard packaging of their perfumes.
- The claim that Martinez perfume offers "original perfumery" and "works only with French perfume makers", stated on the dealer's website
- The claim that Martinez perfumes are an "alternative to the best price" of the world's most popular brands such as Armani, Chanel, Valentino, Herrera and others, stated on the merchant's website.

In the proceedings before the Commission for Protection of Competition, it was established that the producer Bio Aroma Ltd. produces the perfumes as a final composition in Bulgaria or assigns their production to the Bulgarian company "Florgarden" Ltd., and the fragrances used in the production are purchased from the French manufacturer Floressence. The perfumes are offered by Martinez Boutique Ltd. in packages bearing the Martinez logo, representing a stylised eagle with outstretched wings and the inscription Martinez below it.

Правен въпрос

Do the allegations "Fragrance. Made in France", "original perfumery" and "works only with French perfume makers" mislead consumers that they are buying a French perfume similar to the perfumes of the established world brands?

Решение

The SAC considers that in order for there to be misleading advertising, it is necessary to have the following elements:

1. to establish the presence of advertising,
2. to mislead or be able to mislead the persons it reaches and
3. to be able to influence their economic behaviour, thus harming or likely to harm a competitor.

From the evidence gathered in this case, it is established that the fragrances used in the production of Martinez perfumes are actually produced by the French manufacturer Floressence and imported into Bulgaria, thus the statement "Fragrance. Made in France" is objectively true and not misleading, as the trader does not claim anywhere that the final perfume combinations and compositions as finished products were created in France.

The statement about "author's perfumery" is also objectively true, as the evidence gathered shows that the composition of each perfume was created by "Bio Aroma" Ltd. and not purchased ready-made from another manufacturer.

The claim that Martinez perfumes are an "alternative to the best price" of the world's most popular brands is not in itself misleading, as there is a well-established practice on the market to offer alternatives to popular perfumes, as consumers of this type of cosmetics are absolutely aware that they are buying replica version, not an original product. In this case, there is no evidence that the trader Martinez has taken other actions to impress consumers that it offers original products of world-famous brands.

As far as the allegations of the respondent companies are objectively true and do not mislead the consumers, the Commission for Protection of Competition and the Supreme Administrative Court consider that in this case, there is no violation of Art. 32 and 33 of the Competition Protection Act.

URL: <http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/d98489d4e0e345d7c2258709003f1af9?OpenDocument>

Пълен текст: [Пълен текст](#)

Свързани случаи

Няма налични резултати

Правна литература

Няма налични резултати

Резултат

The Supreme Administrative Court, a five-member panel, upheld the decision of the Supreme Administrative Court, a three-member panel upholding the CPC's decision, which found that the respondent companies had not made misleading advertisements.