

Case Details

Case Details

National ID	7036
Member State	Italy
Common Name	Associazione Movimento Consumatori v. Società Education Scuola e Lavoro
Decision type	Other
Decision date	28/03/2006
Court	Corte di cassazione (Supreme court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Injunctions Directive, [Article 2, 1.](#)

Headnote

The ordinary judge - and not the Autorità garante della concorrenza e del mercato ("Italian Antitrust Authority") - has jurisdiction over a suit brought by a consumer association to obtain an order of prohibition of an advertising campaign in accordance with the provisions of the Artt. 3-5 of the Law 30.07.1998 no. 281 (now, consolidated in the Art. 139-140 of the Italian Consumer Code). The rights protected by the organisation should be considered subjective rights (diritti soggettivi) and, thus, the case falls under the jurisdiction of the ordinary judge.

Facts

A consumer association, Movimento Consumatori, sued before the Tribunal of Turin (Italy) the company Società Education Scuola e Lavoro claiming that the latter was making a misleading advertising and asking for an urgent injunction (art. 669-terdecies Italian Code of Civil Procedure) to prohibit the advertising campaign. The judge referred the case to Corte di cassazione ("regolamento preventivo di giurisdizione") in order to define the jurisdiction over the case between the ordinary and the administrative judge, on one hand, and the Italian Antitrust Authority, on the other end.

Legal issue

The Italian Consumer Code defines misleading advertising as any advertising which in any way, including its presentation, is liable to deceive the natural or legal persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, may affect their economic behaviour or which, for such reasons, is liable to injure a competitor' (Art. 20, par. 1, lett. b).

Competitors, consumers, their associations and organisations, the Minister of Productive Activities and every other public authority having an interest in relation to its own institutional tasks, also following a complaint from the public, may request the Italian Antitrust Authority to ensure the restraint of acts of misleading or comparative advertising deemed to be unlawful, to ensure that the continuance of such acts be prevented and that their effects be eliminated. In urgent cases, the Authority may issue a reasoned decision for the cessation with interim effect of the misleading or comparative advertising that is considered to be unlawful (Art. 26).

The jurisdiction of the ordinary courts remains unaffected in matters concerning unfair competition, as governed by

Article 2598 of the Civil Code, and, with regard to comparative advertising, in matters concerning infringement of the law on copyright, protected by Law no. 633 of 22 April 1941 (as amended), and of trade names, protected under Legislative Decree no. 30 of 10 February 2005 (as amended), and of designations of origin that are recognised and protected in Italy, and other distinguishing marks of competitors' undertakings, goods and services.

In the leading case, the Corte di cassazione clarified that the ordinary judge - and not the Autorità garante della concorrenza e del mercato ("Italian Antitrust Authority") - is competent to decide over a suit brought by a consumer association to obtain an order of prohibition of an advertising campaign in accordance with the provisions of the Artt. 3-5 Law 30.07.1998 no. 281 (now, the Artt. 139-140 of the Italian Consumer Code).

Thus, it is clear that the associations of consumers and users duly registered are entitled to act to protect the collective interests of consumers, also in cases involving misleading and comparative advertising.

The judges also held, interestingly, that, in this case, the rights protected by the organisations should be considered subjective rights (diritti soggettivi) and, thus, the case falls under the jurisdiction of the ordinary (and not the administrative) judge.

Decision

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