

Rättspraxis**Uppgifter om ärendet****Nationellt id-nummer:** MD 2008:15**Medlemsstat:** Sverige**Vedertaget namn:** Maglite**Beslutsstyp:** Domstolsbeslut överklagat**Beslutsdatum:** 24/04/2007**Domstol:** Marknadsdomstolen (Stockholm)**Ämne:****Kärande:** Mag Instrument, Inc**Svarande:** Rusta AB**Nyckelord:** confusion, economic behaviour, imitation, misleading actions, unfair competition**Direktivartiklar**Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 2., \(a\)](#) Unfair Commercial Practices Directive, [Annex I, 13.](#)**Huvudanmärkning**

It is an unfair commercial practice to market a product that is an imitation of a competitor's product. Whether such is the case, must be assessed by evaluating whether the two products create the same "mental image" for the consumer. It is not unfair to market a product that is similar to, but not an imitation of, a competitor's product.

Omständigheter

The defendant had advertised and sold certain flashlights which the plaintiff claimed was a confusing imitation of the plaintiff's own product. The plaintiff therefore argued that the defendant was guilty of misleading imitation and unfair exploitation of goodwill.

Juridisk fråga

(1) Is it unfair to market products that are similar to, but not entirely identical to, a competitor's product?

(2) Does such commercial practice take unfair advantage of the competitor's goodwill?

Beslut

(1) The court stated that if a product is found to be an imitation of another known and distinctive product, it is obvious that the existence of such an imitation is likely to affect the consumers' economic behavior (for example, according to the court, there is no doubt that a consumer might buy the wrong item in a store because of the likelihood of confusion). Whether the consumer's economic behavior is affected is therefore essential for the assessment of the case. However, manufacturers must be allowed to market flashlights that are similar to the plaintiff's products, as long as such flashlights are not imitations.

In order to evaluate whether the defendant's products cause confusion as regards their origin, the court conducted an overall assessment of the products, in order to determine whether the products would essentially create the same "mental image" for consumers. The court furthermore stated that such evaluation should be made on the basis of a standard purchasing situation.

The court found that the flashlights did not create the same overall impression, and found it reasonable to assume that the flashlights would not cause corresponding "mental images" for the consumers. Consequently, the defendant's flashlights did not constitute imitations of the plaintiff's flashlights.

(2) As regards the allegation that the defendant's products would take unfair advantage of the goodwill of the plaintiff's products, the court stated that the defendant's products did not refer to the plaintiff's products. Furthermore, the court did not find any association between the two which would amount in an unfair exploitation of goodwill.

URL: <http://www.marknadsdomstolen.se/avgoranden/avgoranden2008/Dom2008-15.pdf>

Hela texten: [Hela texten](#)

Ärendesamband

Inga träffar

Doktrin

Inga träffar

Resultat

The claims were dismissed.