

## Case law

### Case Details

**National ID:** 8J/2010

**Member State:** Portugal

**Common Name:** link

**Decision type:** Other

**Decision date:** 21/04/2010

**Court:** Second Section of ICAP's Jury for Ethics in Advertising (Lisbon)

**Subject:**

**Plaintiff:** Reckitt Benckiser (Portugal), Lda.

**Defendant:** Procter & Gamble Portugal – Produtos de Consumo, Higiene e Saúde, S.A.

**Keywords:** average consumer, comparative advertising, confusing marketing, inaccurate information, misleading advertising

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2.](#) Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2., \(b\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(b\)](#)

### Headnote

(1) It is misleading to use subjective references (such as "compared to traditional products" and "compared to the number one brand") in a comparative advertisement.

(2) It is contradictory and misleading to claim that a cleaning product has "two times more power" than another product, while including a caption in the same or another advertisement in the same campaign claiming that this cleaning product only has "up to two times more power".

### Facts

The plaintiff and the defendant manufacture and sell tablets of detergent powder for the dishwasher.

The defendant used a promotional slogan stating "Fairy all-in-one for dishwasher powder is two times more powerful against grease than the traditional tablets from the number one brand, so Fairy cleans even the most difficult leftovers".

In the same or another advertisement in the same campaign the defendant included a caption claiming that the advertised cleaning product had "Up to two times more power against grease".

The plaintiff argued that the defendant's advertisement campaign used false claims that amount to an illicit and misleading comparative advertisement, because the messages are ambiguous and contradictory, and therefore able to confuse the consumer about the product's capacity.

### Legal issue

It was held that:

(1) The expressions "number one brand" and "traditional tablets" do not amount to comparative advertising, as the average consumer is asked to consider a series of products of the same kind and not necessarily the plaintiff's product.

(2) The ambiguity caused by the subjective expression "traditional tablets" and by the average consumer's inability to identify the "number one brand" amounts to a misleading advertisement.

(3) The contradiction between the claims "Has two times more power against grease" and "Up to two times more power against grease", that appear on the video commercial, results in a mistaken or ambiguous message which is able to mislead the consumer.

(4) The documents submitted by defendant did not prove its claims.

### Decision

(1) Is it unfair to refer to the "traditional product" or "the number one brand" in a comparative advertisement?

(2) Is it misleading to claim that a cleaning product has "two times more power" than another product, while including in a caption in the same or another advertisement in the same campaign claiming that a cleaning product has "up to two times more power"?

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### Legal Literature

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### Result

The defendant was ordered to cease its advertisement campaign.