

## Case Details

### Case Details

National ID	MAO:32/11
Jäsenvaltio	Suomi
Common Name	link
Decision type	Court decision, first degree
Decision date	25/01/2011
Tuomioistuim	Markkinaoikeus (Helsinki)
Aihe	
Kantaja	Expert ASA Oy and Expert Finland Oy
Vastaaja	Verkkokauppa.com Oy
Avainsanat	comparative advertising, misleading advertising, price comparison

### Directive Articles

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

### Headnote

(1) A television campaign in which a customer is shown hanging upside down while store clerks empty his pockets, accompanied by the text "Are you robbed in a household appliance store?", is not denigrating towards competitors when the overall atmosphere created by the campaign will obviously not be perceived as a realistic reproduction of violence, or as a truthful illustration of the store's transactions.

(2) Conversely, when the same campaign is shown online or advertised through the radio, it will be denigrating when the constraints of these mediums do not allow the customer to perceive the humorous nature of the campaign.

### Facts

On 5 December 2009, the defendant started a prime time national marketing campaign on television. The television advertisement included four versions in which only the product changed. In the advertisement, two sales assistants in a household appliance store hang a customer from his feet trying to empty his pockets. At the same time a text "Are you robbed in a household appliance store?" was shown on the screen. Later on in the advertisements, the prices of an identical product applied by both the defendant and the plaintiff were shown next to each other. At the end of the advertisement, the following logo appeared: "Verkkokauppa.com – Most probably always cheaper". The aforementioned text was also read by a man's voice.

Furthermore, the defendant conducted marketing campaigns in radio and social media on the internet as well. In the advertisements the defendant illustrated that the competitors only endeavor to sell more expensive products or products that the customer does not need or products from which the seller gets the best commission. This conduct was illustrated as robbing the customer.

### Legal issue

Does an advertising campaign that depicts a competing store as "robbing" consumers (due to charging higher prices or more expensive products) breach the provisions of Directive 84/450/EEC (on misleading and comparative advertising) that were amended by the UCP Directive?

## Ratkaisu

The court held that the television advertisements created such atmosphere that an average consumer could not consider the advertisements as a realistic reproduction of real violence or as a truthful illustration of the plaintiff's sales transactions. The court therefore considered that the advertisements did not denigrate the plaintiff in the manner of representation and therefore were not contrary to paragraph 2a of the Unfair Business Practices Act (which correspond to article 3A of Directive 84/450/EEC, as amended by article 14 of the UCP Directive).

Conversely, regarding the radio and internet advertisements, the defendant endeavored to create an image of the competitors acting inappropriately against the consumer, specifically by swindling the customers. The possibility of an average consumer to recognize the style of these advertisements is more limited because these advertisements did not include any picture or visual content. The court concluded that an average consumer did not necessarily understand the humoristic style of the advertisement.

The court therefore ruled that the radio and internet advertisements were denigrating against the competitors (including the plaintiff) in the manner of representation.

URL: <http://www.oikeus.fi/markkinaoikeus/53617.htm>

Full Text: [Full Text](#)

## Related Cases

No results available

## Legal Literature

No results available

## Result

The court disallowed the defendant to continue (or renew) radio or internet advertisements that use expressions which:

- refer to deception or robbery of customers;
- suggest that the competitors would consciously sell more expensive products, products which the customer does not need, or products for which the seller gets the best commission.

The court also disallowed price comparisons in which the comparison is based on disparate price information. Finally, the court also disallowed the expression "Verkkokauppa.com - Most probably always cheaper", in cases in which the use of the expression creates the impression that the defendant is generally cheaper than the competitor.

The injunction was applicable under penalty of EUR 50.000 fine.