

Oikeuskäytäntö**Tapaustiedot**

Kansallinen tunniste: MAO:549/10

Jäsenvaltio: Suomi

Lyhytnimi: N/A

Päätöksen tyyppi: Tuomioistuimen päätös, 1. oikeusaste

Päätöksen päivämäärä: 25/11/2010

Tuomioistuin: Markkinaoikeus (Helsinki)

Aihe:

Kantaja: The consumer ombudsman

Vastaaja: Erätukku Oy

Avainsanat: misleading commercial practices

Direktiivin artikkelit

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

Ylähuomautus

(1) The price comparison by a trader with the prices of one competitor only, constitutes an unfair commercial practice.

(2) The price comparison by a trader with the prices of one product offered by a competitor only, while comparable products are offered at a lower price, constitutes an unfair commercial practice.

(3) The price comparison with the lowest prices applied by a competitor for a certain product while the current prices of that product are higher, even though comparison is made only with one or two comparable products offered by the competitor, does not constitute an unfair commercial practice.

Taustatiedot

Erätukku Oy, a sports equipment retailer, has advertised its products in a national newspaper using comparative advertising. The case relates to an advertisement published on 22 October 2008 in which the defendant had widely marketed several of its products for outdoor activities with the slogans "Summertime is over!", "We clear top products on a destruction price".

The defendant had advertised two different styles of knitted garment for a price of 9 and 19,90 EURO. According to the defendant, the knitted garments corresponded to each other and a price comparison of both of these products was made against a knitted garment of one competitor only, who advertised its product for 129 EURO.

Next, the defendant advertised running shoes (15 EURO) with those of a competitor (49 EURO). According to the defendant, the comparison was based on a running shoe model sold by an identical sports equipment retailer. However, it was established that at the time of the advertisement, the competitor of the defendant offered several corresponding models of running shoes available at very affordable prices.

The defendant also advertised soft-shell jackets, shell jackets, shell suits, and North Ice Trekking and Hiking shoes by comparing its own prices to the lowest prices earlier offered by its competitors for one comparable product, this instead of comparing with the competitors' prices applies at the moment of the advertisement.

Oikeudellinen kysymys

(1) Does a price comparison with the prices of one competitor only, constitute an unfair commercial practice?

(2) Does a price comparison with the prices of one product offered by a competitor only, constitute an unfair commercial practice?

(3) Does the price comparison by a trader with the lowest prices applied by a competitor while the prices applied by that competitor at the moment of the advertisement are higher, constitute an unfair commercial practice, even though comparison is made only with one or two comparable products offered by the competitor?

Ratkaisu

The court first generally stated that comparative advertising is misleading when the advertiser cannot reason and show evidence of the correctness of the comparison. A comparative price, the court stated, may mislead the consumer on the amount of benefit gained by the consumer, especially when the comparative price is not based on a sufficiently extensive survey on the competitor's prices. Further, the misleading nature may also be based on the fact that the comparative price is not based on the sufficiently up to date survey on the competitor's prices. In the court's opinion, only a survey made by a trader at the maximum several days before the publication of the advertisement, is sufficiently current to ensure a proper price comparison.

Next, the court assessed the advertisements product-specifically.

(1) As to the price comparison of the knitted garments, the court stated that the defendant compared its own prices with the prices of only one competitor. The court considered that using comparative prices in the advertisement in this respect, was not based on sufficient survey on the prices applied by competitors, hence the defendant did not evidence the correctness of the comparison.

(2) Furthermore, the defendant had advertised running shoes by comparing their prices to only one corresponding product sold by a competitor. The court assessed that at the time of the advertisement, there were several corresponding models of running shoes available at very affordable prices. In this respect, the court stated, using the comparative price in the advertisement is not based on sufficient survey on the prices of the competitors, therefore the defendant did not provide sufficient evidence to support the correctness of the comparison. The court made a similar assessment in respect of the price comparison of caps and backpacks, sport underwear set and socks described above.

(3) Conversely, the court considered that in respect of the soft-shell jacket, shell jacket, shell suit, and North Ice Trekking and Hiking shoes, the defendant made a sufficient survey on competitor prices based on the fact that the defendant made use of the lowest price applied earlier by the competitors as the reference price, this instead of the current prices applied by the competitor. The court ruled that in this case, the survey on the comparative prices was considered sufficient because of the assessment as indicated, although the defendant made the comparison only to one or two comparable products.

URL: <http://www.oikeus.fi/markkinaoikeus/52824.htm>

Koko teksti: [Koko teksti](#)

Asiaan liittyvät tapaukset

Ei tuloksia saatavilla

Oikeuskirjallisuus

Ei tuloksia saatavilla

Hakutulos

The advertisements of the defendant were partially against consumer protection legislation. The court obliged the defendant to cease such commercial practices.