

Case law

Case Details

National ID: Court of Appeal Brussels, 20 January 2009

Member State: Belgium

Common Name:link

Decision type: Court decision in appeal

Decision date: 20/01/2009

Court: Court of Appeal Brussels

Subject:

Plaintiff: Reckitt Benckiser Belgium NV

Defendant: Proctor and Gamble Distribution Company BVBA

Keywords: advertisement, average consumer, distortion, misleading advertising

Directive Articles

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

Headnote

An advertisement which misleads consumers on the specific ingredients of which the product is consisted, does not automatically have an unfair hence prohibited character, as it must be proven that the consumer is influenced in such a way that he is likely to take a transactional decision which he would not have taken otherwise.

Facts

The defendant is a manufacturer of household products, including hand soaps and cleaning tablets to be used in a dishwasher (i.e. the tablets containing the products that clean the dishes). The defendant had launched a television promotion for such cleaning tablets, by first showing a bottle of well-known cleaning soap ("Dreft"), used in many Belgian households, from which the soap fluid emerged. The commercial continued by showing that the soap fluid travelled towards the newly promoted tablet in which the fluid was subsequently incorporated.

The advertisement further stated that the dishwasher tablet "has the same power for your dishwasher as Dreft".

The plaintiff contested this television advertisement by stating that the impression was created for an average consumer that the dishwasher tablet has a similar effect as the well-known cleaning soap and that the fluid section of the tablet in fact contained the cleaning soap Dreft, whereas in reality this was not the case (it was a cleaning fluid but not similar to the Dreft cleaning soap).

In first instance, a cease and desist order was requested by the plaintiff to immediately prohibit the defendant to carry out such advertisement, but this request was denied by the President of the Court (this decision was not made available).

Legal issue

The court first stated that the television commercial can mislead the consumer into thinking that the dishwasher tablet contains the Dreft cleaning soap, whereas in reality it does not. As a result, an average consumer may have the wrong impression of the composition (e.g. the ingredients) of the product advertised.

However, the court further stated, this practice will only be unfair hence prohibited in the event it will induce a consumer to take a transactional decision that it would not have taken otherwise. In this case, the court was of the opinion that the most important feature for a consumer is the effectiveness of the dishwasher tablet. Consequently, if it can be established by the defendant that the dishwasher tablet was as effective as its cleaning soap Dreft, which was actually not disputed by the plaintiff, it will not matter to the consumer which are the ingredients of the dishwasher (i.e. whether or not the fluid part of the tablet was in fact Dreft).

As a result, the court concluded that the defendant had not breached the prohibition on misleading commercial practices.

Decision

Does an advertisement which misleads consumers on the specific ingredients of which the product is consisted, automatically have an unfair hence prohibited character?

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Result

The court ruled against the plaintiff and dismissed the appeal.