

Case law

Case Details

National ID: [2011] IEHC 433

Member State: Ireland

Common Name: McCambridge Limited v Joseph Brennan Bakeries

Decision type: Court decision, first degree

Decision date: 25/10/2011

Court: The High Court (Dublin)

Subject:

Plaintiff: McCambridge Limited

Defendant: Joseph Brennan Bakeries

Keywords: advertisement, competition, confusing marketing, packaging, product marketing, unfair competition

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 2., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 4, Article 11, 2., \(a\)](#)

Headnote

The use of similar packaging does not constitute a "commercial practice" in the sense of the UCP Directive.

Facts

The plaintiff is a major producer of wholewheat brown bread in Ireland. The defendant is a well-known manufacturer of a wide range of different breads, but had not until recently competed with the plaintiff.

In 2008, the plaintiff began to sell its wholewheat brown bread in a re-sealable, clear, plastic bag with a distinctive green panel on the front. In 2011, the defendant changed its packaging for wholewheat brown bread to a similar re-sealable clear, plastic bag.

The plaintiff sought an injunction against the defendant under both common law and under section 71 of the Consumer Protection Act 2007 ("CPA") arguing that the defendant's new packaging caused the plaintiff's customers confusion.

Legal issue

Does the use of similar packaging constitute a "commercial practice" in the sense of the UCP Directive?

Decision

The court granted an injunction on the grounds of the common law principle of passing off but refused to grant an injunction under the CPA.

The court did not consider that what the defendant has done in relation to the design of its packaging constitutes a commercial practice involving "marketing or advertising" within the meaning of the CPA.

As a result, the contested use of the plastic bags, was not considered to be a commercial practice within the meaning of the UCP Directive.

URL: <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/38748b61b563cf228025797a0052a970?OpenDocument>

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Result

The plaintiff's request was denied under the CPA which implements the provisions of the UCP Directive.