



Menu

- [Inheritance](#)
- [Divorce and legal separation](#)
- [Property in marriage & civil partnerships](#)
- [Parental responsibility - child custody and contact rights](#)
- [Moving/settling abroad with children](#)
- [Parental child abduction](#)
- [Family maintenance](#)
- [Cross-border placement of a child including foster family](#)
- [European payment order](#)
- [Court fees concerning European Payment Order procedure](#)
- [Small claims](#)
- [Court fees concerning Small Claims procedure](#)
- [Insolvency/bankruptcy](#)
- [Securing assets during a claim in EU countries](#)
- [Civil cases](#)
- [Criminal cases](#)
- [Judicial auctions](#)
- [Videoconferencing](#)
- [Mediation](#)
- [Legal aid](#)
- [Online forms](#)
- [Where and how](#)
- [Legal systems - EU and national](#)
- [European Judicial Atlas in civil matters](#)
- [Defendants \(criminal proceedings\)](#)
- [Victims of crime](#)
- [Fundamental rights](#)
- [Public documents](#)
- [Rights of minors in court proceedings](#)
- [Access to justice in environmental matters](#)
- [EU law](#)
- [Impact of COVID-19 on the justice field](#)
- [National legislation](#)
- [International law](#)
- [Publication of official announcements](#)
- [Consumer Law Database](#)
- [Glossaries and translations](#)
- [EU case law](#)
- [European Case Law Identifier \(ECLI\)](#)
- [European Case Law Identifier \(ECLI\) search engine](#)
- [Freedom of movement and other Union citizens' rights](#)
- [National case law](#)
- [International case law](#)
- [Business registers – search for a company in the EU](#)
- [Business registers in EU countries](#)
- [Land registers - EU level](#)
- [Land registers in EU countries](#)
- [Bankruptcy and insolvency registers](#)
- [Bankruptcy & insolvency registers - search for insolvent firms in the EU](#)

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Mediators

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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.

Inheritance

Divorce and legal separation

Property in marriage & civil partnerships

Parental responsibility - child custody and contact rights

Moving/settling abroad with children

Parental child abduction

Family maintenance

Cross-border placement of a child including foster family

European payment order

Court fees concerning European Payment Order procedure

Small claims

Court fees concerning Small Claims procedure

Insolvency/bankruptcy

[Securing assets during a claim in EU countries](#)

[Civil cases](#)

[Criminal cases](#)

[Judicial auctions](#)

[Videoconferencing](#)

[Mediation](#)

[Legal aid](#)

[Online forms](#)

[Where and how](#)

[Legal systems - EU and national](#)

[European Judicial Atlas in civil matters](#)

[Defendants \(criminal proceedings\)](#)

[Victims of crime](#)

[Fundamental rights](#)

[Public documents](#)

[Rights of minors in court proceedings](#)

[Access to justice in environmental matters](#)

[EU law](#)

[Impact of COVID-19 on the justice field](#)

[National legislation](#)

[International law](#)

[Publication of official announcements](#)

[Consumer Law Database](#)

[Glossaries and translations](#)

[EU case law](#)

[European Case Law Identifier \(ECLI\)](#)

[European Case Law Identifier \(ECLI\) search engine](#)

[Freedom of movement and other Union citizens' rights](#)

[National case law](#)

[International case law](#)

[Business registers – search for a company in the EU](#)

[Business registers in EU countries](#)

[Land registers - EU level](#)

[Land registers in EU countries](#)

[Bankruptcy and insolvency registers](#)

[Bankruptcy & insolvency registers - search for insolvent firms in the EU](#)

[Types of legal professions](#)

[Lawyers](#)

[Notaries](#)

[Legal translators/interpreters](#)

[Find an expert](#)

[Forensic experts](#)

[Mediators](#)

[Training of legal practitioners](#)

[European Judicial Network in civil and commercial matters](#)

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