

Case law**Case Details**

National ID: 4 Ob 209/14k

Member State: Austria

Common Name: 4 Ob 209/14k

Decision type: Supreme court decision

Decision date: 16/12/2014

Court: Supreme Court

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: comparative advertising, unfair commercial practices, unfair competition

Directive Articles

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

Headnote

An advertisement comparing products on the basis of non-objective values is considered to be unfair competition.

Facts

The defendant advertised in a magazine designated for advertising agencies.

The published advertisement shows three magazine racks standing next to each other, the defendant's one being in the middle. The advertisement was accompanied by the slogan "Good journalism is neither left nor right".

The plaintiff requested to prohibit the defendant from using this pejorative advertisement, as it suggests that the plaintiff's newspaper is inferior.

Legal issue

The court decided that the pejorative advertising is indeed an unfair competition because it is an evaluation which cannot be determined objectively.

Comparative advertising is permitted if it is based on essential, relevant, verifiable and typical characteristics of the concerned goods or services and not only based on subjective evaluations. The objectivity requirement prohibits comparative advertising based on characteristics that are not verifiable.

Decision

Is the non-objective dispraise of a competitor considered to be unfair competition?

URL: https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20141216_OGH0002_00400B00209_14K0000_000

Full text: [Full text](#)

Related Cases

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Result

The defendant's appeal was not successful.