

**Jurisprudencia****Detalles del asunto**

**ID nacional:** AP de Madrid (Sección 28ª) Sentencia num. 208/2011 de 17 junio

**Estado miembro:** España

**Denominación común:** N/A

**Tipo de resolución:** Resolución judicial recurrida

**Fecha de la resolución:** 17/06/2011

**Órgano jurisdiccional:** Audiencia Provincial de Madrid

**Asunto:**

**Demandante:** ASOCIACIÓN DE USUARIOS DE LA COMUNICACIÓN

**Demandado:** HOUSEDIET S.L.U. and G Y J ESPAÑA EDICIONES, S.L.

**Palabras clave:** legal actions, misleading commercial practices, misleading omissions

**Artículos de la Directiva**

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1.](#)

**Nota preliminar**

1. Under article 32 of Unfair Competition Act, actions could be filed against anyone participating in the infringement, including advertising mediums which role was secondary (cooperators).

2. It is not necessary to inform consumers on the need to follow nutritional programs when advertising weight-reduction products, as, in fact, advertising the slimming properties of these types of products is prohibited under Royal Decree 1907/1996 on publicity and commercial promotion of products, activities and services with health. Advertising of these types of properties is only lawful when the product is a medicine.

**Hechos**

The defendant had displayed two advertisements in which its premises where shown together with a slogan saying "More than 1 million people have already broken up with obesity". The advertising also referred to two specific individuals who had lost 36 and 30 kilos respectively. These two advertisements were published in the co-defendant's magazine. A consumer association took legal action claiming, among other things, that these advertisements were to be considered unfair commercial practices, for being misleading towards the consumers, based on the lack of information of the advertisement, which did not inform the consumer on the need to follow a diet and a nutritional program in order to lose weight. The plaintiff based its action on the General Advertising Act and the Unfair Competition Act.

**Cuestión jurídica**

1. Could an advertising medium be found liable (as cooperator of the infringer), should unfair competition actions for unlawful advertisements be filed in court?

2. Must weight-reduction products' advertising necessarily inform consumers about the need to complement their intake with nutritional programs?

**Decisión**

The Court ruled that an infringement of the General Advertising Act is not incompatible with an infringement of the Unfair Competition Act; furthermore, those actions may be accumulated (if they meet the legal requirements) or exercised alternatively.

The Court also stated that it is considered not informing the consumer on the need to complement a weight-reducing product with a diet in order for the consumer to lose weight a misleading omission. Since in the advertising materials the outstanding weight-losing features of the products are referred to, the average consumer could be led to think that the product by its own is sufficient to lose weight and that it does not have to be complemented by a diet or dietetic program.

Texto completo: [Texto completo](#)

**Asuntos relacionados**

No hay resultados disponibles

**Literatura jurídica**

No hay resultados disponibles

**Resultado**

The advertisements were declared unlawful and the Court ordered the defendants to cease such advertising.