

Case Details

Case Details

National ID	link
Lidstaat	België
Common Name	link
Decision type	Court decision in appeal
Decision date	05/12/2014
Gerecht	Hof van Beroep Brussel
Onderwerp	
Eiser	Electrabel Customer Solutions SA
Verweerder	Lampiris SA
Trefwoorden	comparative advertising, misleading advertising, price comparison, price information

Directive Articles

Misleading and Comparative Advertising Directive, [Article 4](#) Misleading and Comparative Advertising Directive, [Article 4, \(a\)](#) Misleading and Comparative Advertising Directive, [Article 4, \(c\)](#)

Headnote

(1) An advertisement in which a competitor is named, in which it is alleged that the consumer will always pay less with the advertiser, and which invites the consumer to send the invoice of the competitor to calculate the savings they could realize when switching provider, constitutes a comparative advertisement.

(2) A comparative advertising campaign, which alleges that consumers can always and under any conditions, obtain a price advantage, whereas this is not proven in reality, constitutes a misleading and therefore unlawful comparative advertising campaign.

Facts

Plaintiff and defendant are competitors on the energy market in Belgium. The defendant launched an advertising campaign on the radio in which 2 persons discuss that they can send the energy invoice they received from plaintiff, to defendant. Defendant would then calculate how much the consumer can save on its invoice when they switch provider. The radio spot ends with a statement saying that the defendant is "green, free and less expensive".

Other similar offline advertisements were made.

Plaintiff is of the opinion that these (comparative advertising) marketing messages are unlawful as they do not objectively compare one or more material, relevant, verifiable and representative features.

Legal issue

(1) Does an advertisement in which a competitor is named, in which it is alleged that the consumer will always pay less with the advertiser, and which invites the consumer to send the invoice of the competitor to calculate the savings they could realize when switching provider, constitute a comparative advertisement?

(2) Does a comparative advertising campaign, which alleges that consumers can always and under any conditions,

obtain a price advantage, whereas this is not proven in reality, constitute a misleading and therefore unlawful comparative advertising campaign?

Uitspraak

The court first affirms that this case concerns a practice of comparative advertising, as the defendant intends to state that consumers will pay less than they pay the plaintiff for similar services. The court considers there are clear references to the competitor and that there is a comparison made on the basis of price.

The court then considers this advertising misleading as it creates the impression that the prices of the defendant are always, and under all circumstances, cheaper than those of the plaintiff. As this is a misleading statement, the court rules that one of the conditions to lawfully perform comparative advertising, is not fulfilled.

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Result

The court ruled that the advertisement should be considered misleading.
