

Case law

Case Details

National ID: 415/2001/1

Member State: Malta

Common Name: World Marketing Services Limited vs Crosscrafts Company Limited

Decision type: Other

Decision date: 11/04/2001

Court: Civil Court, First Hall

Subject:

Plaintiff: World Marketing Services Limited

Defendant: Crosscrafts Company Limited

Keywords: advertisement, advertorial, comparative advertising

Directive Articles

Misleading and Comparative Advertising Directive, [link](#)

Headnote

(1) Although comparative advertising is allowed, it cannot occur by disparaging the competitor's goods, as such disparaging remarks might have the intention to harm the proprietor of the said goods (the competitor).

Facts

Plaintiff had sought out a warrant of prohibitory injunction against defendant, who was a competitor of the plaintiff which also imported and distributed food processors. Plaintiff claimed defendant was unfavourably comparing plaintiff's product to defendant's, in breach of the rules on unfair competition (found in the Commercial Code (Cap. 13 of the laws of Malta). Even though plaintiff's product was not mentioned by name it was clearly identifiable. Plaintiff sought to stop defendant from doing so and from using its product for demonstrations. Defendant argued that it was acting in terms of Articles 49 and 50 of the Consumer Affairs Act (which, at the time, implemented Articles 2a and 3a of Directive 94/450/EEC into Maltese law), and therefore it was allowed to carry out comparative advertising.

Legal issue

The court held that Article 49 of the Consumer Affairs Act (which, at the time, implemented Article 2a of Directive 94/450/EEC into Maltese law) affected the rules in the Commercial Code on unfair competition and therefore comparative advertising is today allowed, provided it is in line with Article 50 of the said Act (which at the time implemented Article 3a of Directive 94/450/EEC). In this regard, whether the facts advertised were true or not has relevance, as misrepresentation of facts would amount to misleading advertising.

Although these provisions of the Act were said to prevail of the provisions of the Commercial Code, this did not mean that the provisions of the Code on unfair competition were no longer applicable.

The court made reference to the Commission's Explanatory Memorandum to the Draft of 1991 (COM (91) 147 final), and noted that there was reference to not discrediting or denigrating the goods of a competitor when undertaking comparative advertising.

The court concluded that the defendant was indeed denigrating the plaintiff's product and was therefore found to have acted in breach of both the comparative advertising provisions and the unfair competition provisions.

Decision

(1) What are the limits of comparative advertising?

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Result

The warrant of prohibitory injunction was granted.