

Case law

Case Details

National ID: 17 Ob 10/11m

Member State: Austria

Common Name: 17 Ob 10/11m

Decision type: Supreme court decision

Decision date: 10/05/2011

Court: Supreme Court

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: misleading advertising, trade mark, unfair competition

Directive Articles

Misleading and Comparative Advertising Directive, [Article 3](#) Misleading and Comparative Advertising Directive, [Article 4, \(h\)](#)

Headnote

Whether the use of confusable signs is misleading has to be determined in accordance with the actual conditions of a market. It is required that the trademarks are actually used and are well known by the public, because otherwise consumers would not be misled by the use of similar signs.

Facts

Both the defendant and the plaintiff sell aloe vera products and perfumes via the internet. The defendant sold a perfume for men called "Jungle Man" which he advertises on the internet and in a brochure using a sign in which a cougar jumps over the letters "Jungle Man", which is similar to the trademark "PUMA" with a jumping cougar.

The plaintiff filed a cease-and-desist order to prohibit the defendant from using the sign or a confusable similar sign for advertising or distributing a perfume. The court of first instance granted a preliminary injunction and prohibited the use of the sign because of risk of confusion with the trademark "PUMA". The appellate court dismissed the safeguard application.

Legal issue

As the plaintiff is not owner of the trademark "PUMA", the court explained that not only the owner of a trademark and his licensee are authorized to file an unfair competition claim, but competitors of an enterprise using similar signs as their competitors to advertise their products as well.

Whether the use of confusable signs is misleading has to be determined in accordance with the actual conditions of a market. It is required that the trademarks are actually used and are well known by the public, because otherwise consumers would not be misled by the use of similar signs.

Further, the court deemed the defendant's sign not to be similar to the trademark "PUMA" as the word components, which are of higher importance than the image, are different.

Decision

Under which conditions is the use of confusable signs misleading?

URL: https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JIT_20110510_OGH0002_01700B00010_11M0000_000

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Result

The appeal was dismissed.