

## Case law

### Case Details

**National ID:** Administrative case 9781/2015

**Member State:** Bulgaria

**Common Name:** link

**Decision type:** Supreme court decision

**Decision date:** 08/02/2016

**Court:** Supreme Administrative Court

**Subject:**

**Plaintiff:** Lidl Bulgaria EOOD and Co KD

**Defendant:** Bulgarian Commission on Protection of Competition

**Keywords:** accuracy of the claim, competition, misleading advertising, retailer

### Directive Articles

Misleading and Comparative Advertising Directive, [Article 2, \(b\)](#)

### Headnote

The use of the advertising slogan "The best from Bulgaria. The best from Europe" in relation to specific food products identified with their brands, constitutes misleading advertising because it is likely to deceive the consumers and affect their economic behaviour.

### Facts

In 2013 the plaintiff launched an advertising campaign for promoting certain food products (yoghurt, honey and others) offered for sale in its supermarket chain in Bulgaria. The campaign involved TV commercials, outdoor advertising and distribution of brochures containing images of the goods and their brands under the leading slogan 'The best from Bulgaria. The best from Europe'

As a result of certain consumers' complaints, the Bulgarian Commission on Protection of Competition (which is the regulatory body responsible for enforcement of the national provisions transposing Directive 2006/114/EC) started an investigation in relation to this matter. In the course of the investigation, laboratory analysis of the food products which were provided by the plaintiff and the defendant established that the quality indices of the respective products were slightly above the minimum levels permitted by the applicable law. Accordingly, the Commission on Protection of Competition concluded that the advertising statement "the best from Bulgaria" is not correct in view of the fact that the respective goods were not objectively the best in their category in terms of their quantity and quality, and this way of representation is likely to deceive the consumers and affect their economic behaviour. In view of the above, the defendant issued a decision establishing that the advertising campaign constitutes misleading advertising and imposed pecuniary sanction on the plaintiff amounting to BGN 370,859 (approx. EUR 190.000)

The decision was upheld by the first instance court. As a final resort, the plaintiff appealed the first instance court judgment before the cassation instance, i.e. the Supreme Administrative Court.

### Legal issue

In the appeal the defendant firstly argued that the advertising slogan 'The best from Bulgaria' was to be interpreted in the context of the respective categories of food products which were known as traditional Bulgarian goods, hence the slogan was intended to emphasize that as a general rule these types of goods were the best products which the country offered in the food industry. However, this position was not accepted by the court with the argument that the food products were promoted under their specific brands, accordingly not the general type of food products but the specific items with their specific brands were advertised as "the best."

The defendant also argued that the superlative 'best' used in the advertising was not a factual statement but expressed its subjective opinion on the quality of the goods offered for sale and this was not likely to mislead the average consumer who is reasonably well informed, experienced, observant and critical and acts in accordance with his own taste and preferences. However, the court dismissed this position as unfounded with the reasoning that the average consumer was not familiar with the food products under these brands and with their quality characteristics, therefore he was likely to be misled by the advertisement. The court continued to state that the superlative 'best' was likely to be perceived as a mere exaggeration only if this type of advertisement was used by a starting or not so well-known retail chain, whereas in the present case this indication was used by one of the biggest supermarket chains in Europe, hence the slogan was perceived as a strong competitive challenge that would affect the economic behaviour of consumers.

The court also ruled that the defendant failed to furnish evidence in accordance with Article 7(a) of Directive 2006/114 as to the accuracy of the factual claim about supremacy of the advertised goods over the same goods offered by other competitors. The argument of the defendant that this slogan was a subjective opinion which was objectively unprovable was considered by the court as admission of the fact that the advertising claim was incorrect and misleading. It stressed that when conducting an assessment of the misleading character of the advertising it was irrelevant whether the deception resulted from false claims or a subjective opinion.

In view of the above, the Supreme Administrative Court confirmed that the conclusion of the defendant about the misleading character of this advertising was correct.

### Decision

Does the use of the advertising slogan "The best from Bulgaria. The best from Europe" in relation to specific food products identified with their brands constitute misleading advertising, given that this advertising claim cannot be objectively proven?

URL: <http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/647c816272b97ca3c2257f46002f2f19?OpenDocument>

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**Result**

The court upheld the first instance court's judgment that rejected the plaintiff's appeal.