

Case law

Case Details

National ID: Tesco Ireland Limited v Dunnes Stores

Member State: Ireland

Common Name: N/A

Decision type: Other

Decision date: 23/12/2009

Court: The High Court

Subject:

Plaintiff: Tesco Ireland Limited

Defendant: Dunnes Stores

Keywords: advertising, B2B, comparative advertising, injunction

Directive Articles

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

Headnote

The Court has jurisdiction to make a final order but not to grant an interim or interlocutory order in respect of misleading advertising.

Facts

The Plaintiff and the Defendant are both major supermarket and retail operators in Ireland. The Plaintiff sought to restrain, through interlocutory and final orders, allegedly misleading comparative advertising carried out by the Defendant.

The complaint is that the Defendant's advertisements, by comparing the Defendant's promotional prices with the Plaintiff's standard prices, failed to compare "like with like", which it argued was misleading for customers and in breach of the Consumer Protection Act 2007 and the European Community (Misleading and Comparative Marketing Communications) Regulations 2007. (the "2007 Regulations").

The Consumer Protection Act 2007 which was brought into effect in May 2007 provides for the implementation of The EU Unfair Commercial Practices Directive (Directive 2005/28/EC of 11 May 2005) in Ireland.

Under section 67 of the Consumer Protection Act 2007, the National Consumer Agency was put on notice and afforded an opportunity to be heard and adduce evidence (as is required in cases involving claims of unfair, misleading or aggressive commercial practices), however, in this instance, the Agency chose not to participate in the application and confirmed that it would maintain a watching brief.

Dunnes Stores contended that the information contained in its advertisements was accurate as at the date of publication and not capable of misleading consumers in the context of a daily changing advertising environment where pricing approaches are complex. Dunnes Stores also claimed that the 2007 Regulations and the 2007 Act did not confer on the Court the jurisdiction to grant interlocutory relief. In reply, Tesco submitted that the Court has jurisdiction to grant interlocutory relief under the 2007 Act and the 2007 Regulations, and that it was also open to the Court to make a final order.

The High Court held that the Court does not have jurisdiction to grant an interim or interlocutory order under the 2007 Act and/or the 2007 Regulations, and the Court could therefore only make a final order in this case. However, the Court considered that it would be 'grossly unfair' to the defendant to make a final order in the circumstances as the current application against the defendant was only for interlocutory relief. Also, the Court found that the evidence led by the parties at the hearing was inadequate and that it would be dangerous to make a final order on the facts as presented. As a result, Tesco's application was dismissed.

Legal issue

Do the Courts have jurisdiction to grant interlocutory relief against misleading comparative advertising under the 2007 Regulations?

Decision

From an examination of previous case law which related to the regulations which preceded of the 2007 Regulations, the Court decided that the same considerations apply to an order granted under section 5 of the 2007 Regulations in respect of misleading advertising:

- The power granted to the Court under the Regulations is inconsistent with the granting of a temporary order. The Regulations provide for publication of the Court's decision in full and a corrective statement, which would require a final decision to have been made that the advertisement was misleading.
- On the application for the order, the Court, must make a finding as to whether the advertising is misleading. This would not be required on an application for an interlocutory injunction.
- The Regulations also provide for the prohibition of misleading advertising in the public interest. This would not arise in the context of an interlocutory injunction.

The Court therefore held that under Regulation 5(1), that it had jurisdiction to grant or refuse a final order, but it did not have jurisdiction to grant or refuse an interim or interlocutory order to restrain misleading advertising.

The Court found that it would be unfair to the Defendant to make a final order in the circumstances when the understanding was that the Defendant was facing an application for interlocutory relief in a plenary action.

URL: <http://www.bailii.org/ie/cases/IEHC/2009/H569.html>

Full text: [Full text](#)

Related Cases

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Legal Literature

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Result

The Court refused to make a final order at this stage, and held that it did not have jurisdiction to grant interim or interlocutory relief.