

**Νομολογία****Στοιχεία της υπόθεσης**

**Εθνικός αναγνωριστικός αριθμός:** Court decision number 2546/2014

**Κράτος μέλος:** Ελλάδα

**Κοινή ονομασία:** N/A

**Είδος απόφασης:** Προσβαλλόμενη δικαστική απόφαση

**Ημερομηνία απόφασης:** 01/01/2014

**Δικαστήριο:** Εφετείο Θεσσαλονίκης

**Θέμα:**

**Ενάγων:** Unknown

**Εναγόμενος:** 1. Unknown 2. Unknown

**Λέξεις-κλειδιά:** advertising, comparative advertising, misleading advertising, trader, unfair competition

**Άρθρα της οδηγίας**

Misleading and Comparative Advertising Directive, [Article 2](#) Misleading and Comparative Advertising Directive, [Article 2, \(a\)](#) Misleading and Comparative Advertising Directive, [Article 2, \(b\)](#) Misleading and Comparative Advertising Directive, [Article 2, \(c\)](#) Misleading and Comparative Advertising Directive, [Article 2, \(d\)](#) Misleading and Comparative Advertising Directive, [Article 3](#) Misleading and Comparative Advertising Directive, [Article 3, \(a\)](#) Misleading and Comparative Advertising Directive, [Article 3, \(b\)](#) Misleading and Comparative Advertising Directive, [Article 3, \(c\)](#) Misleading and Comparative Advertising Directive, [Article 4](#) Misleading and Comparative Advertising Directive, [Article 4, \(a\)](#) Misleading and Comparative Advertising Directive, [Article 4, \(b\)](#) Misleading and Comparative Advertising Directive, [Article 4, \(c\)](#)

**Περίληψη**

(1) For the purposes of Directive 2006/114/EC, 'advertising' means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations.

(2) 'misleading advertising' means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor, while 'comparative advertising' means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

(3) Under Directive 2006/114/EC, a 'trader' means any natural or legal person who is acting for purposes relating to his trade, craft, business or profession and anyone acting in the name of or on behalf of a trader.

(4) In determining whether advertising is misleading, account should be taken of all its features, and in particular of any information it contains concerning:

- (a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;
- (b) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided;
- (c) the nature, attributes and rights of the advertiser, such as his identity and assets, his qualifications and ownership of industrial, commercial or intellectual property rights or his awards and distinctions.

(5) Comparative advertising is permitted, as far as the comparison is concerned, when the following conditions are met:

- (a) it is not misleading,
- (b) it compares goods or services meeting the same needs or intended for the same purpose and
- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price.

**Πραγματικά περιστατικά**

The defendant had filed a claim against the plaintiffs (a company and its legal representative) for having included in an advertising brochure a photo of the defendant's historical headquarters rather than its real industrial modern headquarters - next to a photo of the plaintiffs' industrial contemporary seat; therefore the comparison between the headquarters of the two competitors was not objective. The defendant claimed that this brochure misled the clients, as it showed the defendant's company as inferior and outdated and gave inaccurate and prejudicial impressions with regard to the defendant's productive capacity. The court granted the defendant's claim. Following the decision of the first instance, the plaintiffs filed an appeal before the court of appeal of Thessaloniki against the previous decision and the defendant.

**Νομικό ζήτημα**

(1) How is advertising defined according to Directive 2006/114/EC?

(2) When is advertising characterized as misleading or comparative?

(3) What is the definition of trader in relation to Directive 2006/114/EC?

(4) What should be taken into account in order to determine whether advertising is misleading?

(5) Under what conditions is comparative advertising permitted?

**Απόφαση**

The court ruled that, based on the provisions set by Directive 2006/114/EC (art. 4), a comparative advertising, that determines directly or indirectly the identity of a specific competitor or similar goods or services that this competitor offers and that makes a comparison of similar goods or services of the advertiser and of those of his competitor, is allowed and does not constitute an act of unfair competition, but it rather contributes to shaping healthy competition, if it is not misleading; i.e. if the comparison of the characteristics of goods and services, including the price, is made in an objective and verifiable way, and the goods or services being compared meet the same needs or are intended for the same purpose. As proved however by the facts of the case and the proceedings, the comparison of the photographs of the parties' headquarters in the brochure is misleading – and therefore it consists of an unlawful comparative advertising that is not permitted. In specific the photos of the premises of the plaintiff show both the external and the internal view of a modern industrial unit in the Industrial Area of Thessaloniki, while the photographs of the defendant's premises show the old historic seat and not his current modern headquarters. So, the plaintiff falsely showed that the manufacturing plants and production units of the defendant's products were in those obsolete premises, in contrast with the plaintiff's own modern production facilities in the industrial area of Thessaloniki. That way, both plaintiffs, although they knew that this was not a comparison of similar installations, still they made false and misleading comparative advertising, aiming to unfair competition, trying to present the defendant's company as inferior to theirs. Their aim was to take advantage of the lack of general public knowledge regarding the actual conditions of the defendants current headquarters and to cause inaccurate, misleading and damaging impressions on the consumers about the defendant's productive capacity.

Πλήρες κείμενο: [Πλήρες κείμενο](#)

#### **Συναφείς υποθέσεις**

Δεν υπάρχουν αποτελέσματα

#### **Νομική βιβλιογραφία**

Δεν υπάρχουν αποτελέσματα

#### **Αποτέλεσμα**

The plaintiffs' appeal was dismissed.