

Ítélezési gyakorlat**Az ügy részletei**

Nemzeti azonosító: VEF2013. 26.

Tagállam: Magyarország

Közhasználatú név: N/A

Határozat típusa: Megtámadott bírósági határozat

A határozat napja: 07/09/2016

Bíróság: Fővárosi Közigazgatási és Munkaügyi Bíróság

Tárgy:

Felperes: Vodafone Magyarország Mobil Távközlési Zrt.

Alperes: Gazdasági Versenyhivatal (Competition Authority)

Kulcsszavak: burden of proof, comparative advertising, misleading advertising

Az irányelv cikkei

Misleading and Comparative Advertising Directive, [Article 4, \(a\)](#) Misleading and Comparative Advertising Directive, [Article 4, \(c\)](#) Misleading and Comparative Advertising Directive, [Article 7, \(b\)](#)

Megjegyzés

A comparative advertisement, in order to be in line with the provisions of Directive 2006/114/EC and of the implementing national laws, must be based on trustworthy and accurate evidence proving that the information displayed in the advertisement is true, real and accurate. Furthermore, it is the advertiser's obligation to provide such evidence.

Tények

The defendant initiated a procedure against the plaintiff regarding its possible unlawful comparative advertising activities related to mobile network services. In the advertisement, the plaintiff claimed that "his network is present at the biggest, the fastest, the longest, the highest and the widest places", and claimed that his network has a coverage of 97,4% .

In its decision, the defendant stated that based on the overall impression of the advertisement, the advertisement suggested that the plaintiff's mobile network is the biggest, fastest, "longest", highest and widest in the country. However, the plaintiff failed to present any evidence proving such statements.

The plaintiff claimed that the advertisement only states that his network is available at "the biggest, the fastest, the longest, the highest and the widest places in the country", and that these adjectives had not related to his network itself.

The defendant rejected the plaintiff's above defence, and held that the plaintiff had violated the obligation of objective comparison and also conducted unfair commercial practices against its competitors. Therefore, the defendant imposed a fine of HUF 125,000,000 on the plaintiff.

The plaintiff appealed the decision of the defendant at the first instance court. However, the first instance court rejected plaintiff's action stating that the advertisement had been deceptive and had not been objective as determined by the defendant, and the plaintiff had been unable to present sufficient evidence to prove otherwise.

Plaintiff appealed the first instance decision at the court, but the court upheld and agreed with the decision of the first instance court stating that its judgment was sufficiently detailed, thorough and accurate. Plaintiff had been unable to present new arguments that could have refute the reasoning of the first instance court.

Jogi kérdés

What are the necessary requirements of a comparative advertisement to be in line with the provisions of Directive 2006/114/EC and of the implementing national laws?

Határozat

In its decision, the court held that the comparative advertisement used by the plaintiff was deceptive and had not been not objective, and that the plaintiff was unable to present sufficient evidence to prove otherwise.

Teljes szöveg: [Teljes szöveg](#)

Kapcsolódó ügyek

Nincs találat

Jogi szakirodalom

Nincs találat

Eredmény

The court upheld the decision of the first instance court.