

Case law

Case Details

National ID: MD 2010:6

Member State: Sweden

Common Name: link

Decision type: Court decision in appeal

Decision date: 09/02/2010

Court: The Swedish Market Court (Stockholm)

Subject:

Plaintiff: KPA Pensionsförsäkring AB (publ)

Defendant: SPP Livförsäkring AB

Keywords: comparative advertising, financial services, misleading advertising, similar product

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2](#). Unfair Commercial Practices Directive, [Chapter 2, Article 5, 4., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#).

Headnote

(1) It is misleading to compare financial products without explaining their differences.

(2) It is unfair to suggest that a product choice must be made swiftly, while in reality there are no circumstances indicating that the choice needs to be made swiftly.

(3) It is misleading to compare the financial yield of two products, without explaining the circumstances associated with this yield.

Facts

The plaintiff is a company active in the business of insurances, asset management and pension administration.

The defendant is a company active in the same business sector. It provides various types of pension products, consisting of, inter alia, unit-linked insurances in the form of generation funds.

The plaintiff argued that the defendant was to be prohibited to:

(1) compare its generation funds with the traditional insurance products offered by the plaintiff, without explaining the differences between the products. The plaintiff also argued that such comparisons can only be made in relation to a period of time that is topical and reliable;

(2) indicate that the choice of product had to be made swiftly, while there were no circumstances indicating so;

(3) indicate that the products of the defendant had given a 400% better yield than the plaintiff's products.

Legal issue

(1) The court found that the marketing distributed by the defendant to its customers did not set forth any information regarding the economic risks of investing in the defendant's generation funds, and did only set forth the positive attributes of the products.

Since the omitted information related to the customer's risk of depreciation and loss of yield regarding its investments, the omitted information was considered to be essential. The court consequently found that the comparison between the plaintiff's products and the defendant's products was misleading and unfair.

Furthermore, the court found that the comparisons made were not topical, as they referred to circumstances during the time period of years 2001-2007, while the marketing materials had been distributed at the end of 2008. Hence, the positive image that had been drawn up in the marketing materials was not considered as having been consistent with the actual conditions at the time for the distribution of the marketing. Consequently, the court found the marketing unfair also in this regard.

(2) The defendant had indicated in its marketing materials that the choices related to pension investments had to be made with urgency and that the consumer would suffer if not making the relevant choices in a short period of time. The court found this statement to be incorrect, misleading and unfair.

(3) Finally, with respect to the statement that the defendant's products had given a 400% better yield than the plaintiff's products, the court concluded the following.

Although, in the opinion of the court, the statement of the specified yield appeared correct as such, the other circumstances of the case (the differences between the products, as well as the market situation when the marketing materials were distributed), which were not mentioned, were also important to evaluate.

This led the court to the conclusion that the marketing was misleading, even though the specified yield as such was considered as being accurate. The court further stated that it could be assumed that the marketing had had an affect on the consumer's ability of making a well founded transactional decision.

Decision

(1) Is it misleading to compare financial products without explaining their differences?

(2) Is it unfair to suggest that a product choice must be made swiftly, while in reality there are no circumstances indicating that the choice needs to be made swiftly?

(3) Is it misleading to compare the financial yield of two products, without explaining the circumstances associated with this yield?

URL: <http://www.marknadsdomstolen.se/avgoranden/avgoranden2010/Dom2010-6.pdf>

Full text: [Full text](#)

Related Cases

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Legal Literature

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Result

The requests were granted.