

## Case law

### Case Details

**National ID:** ERS/084/08

**Member State:** Portugal

**Common Name:** link

**Decision type:** Court decision, first degree

**Decision date:** 30/07/2010

**Court:** Directing Council of the Regulatory Body for Health (Porto)

**Subject:**

**Plaintiff:** SMILE – Clínica de Medicina Dentária Lda.

**Defendant:** SMILE UK Ltd. – Portuguese Branch

**Keywords:** identity of the trader, misleading advertising, misleading commercial practices, transactional decision

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Article 5, 2](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(f\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 2](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 2](#).

### Headnote

Traders who, through actions or omissions, fail to clearly distinguish themselves in their advertising from other traders with similar names, are liable to cause consumers to make transactional decisions they would otherwise not have made by misleading them as to the identity of the trader.

### Facts

The defendant advertised its services using flyers identifying itself as "SMILE Clinics" or "SMILE Dental Clinics". The plaintiff argued, inter alia, that such advertising was misleading because consumers could be misled into thinking that the clinic indicated in the advertisements was somehow affiliated with the plaintiff's own business.

This caused the consumers to take transactional decisions they would not have taken otherwise, due to the fact that they were misled as to the identity of the trader with whom they were dealing.

### Legal issue

The definition of "misleading" in Articles 7 and 9 of the Portuguese Decree-Law 57/2008 of 26 March (implementing the UCP Directive) does not require the information put forward by the trader to be factually inaccurate. An advertisement can also be considered an unfair commercial practice in the event the information contained therein is merely incomplete, and can mislead consumers.

The evidence presented in this case demonstrated that a large number of consumers were in fact misled by the advertisement as to the identity of the trader.

### Decision

Does the use in advertisements by a trader of a name similar to the name of another trader that provides the same services constitute a misleading commercial practice?

URL: <http://www.ers.pt/actividades/instrucoes/Deliberacao%20ERS-084-08%20-Smile.pdf>

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result

The court ruled in favour of the plaintiff: the defendant must always identify itself using its complete name in advertising, so as not to mislead consumers any more.