

Case law

Case Details

National ID: IER 2010/60

Member State: Netherlands

Common Name: link

Decision type: Court decision in appeal

Decision date: 23/03/2010

Court: Court of Appeal Amsterdam

Subject:

Plaintiff: Tele2 Nederland B.V.

Defendant: UPC Nederland B.V.

Keywords: average consumer, false impression, fine print, material information, misleading advertising, misleading omissions, misleading price

Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 1](#). Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 7, 3](#).

Headnote

(1) Referring in a radio commercial to the general telephone number and the website of the trader to consult the specific conditions, may be insufficient to make the material information available to consumers, despite the limitations in space and time of a radio commercial. This will be the case when the offer creates a general impression that conflicts with the specific conditions.

(2) Using an asterisk on a commercial poster that refers to the specific conditions at the bottom of the poster, could constitute a misleading advertisement when the general impression of the offer is in conflict with the specific conditions and these conditions are overshadowed by the advertisement.

Facts

The defendant, a telecommunication provider, launched a promotional campaign with advertising materials such as a radio commercial and commercial posters.

- In its radio commercial, the defendant stated that consumers could buy a "telephony + internet promo pack for 20 EUR", and referred to its telephone number and its website to consult the specific conditions. One of the requirements of the promo was a connection to the defendant's cable network (amounting to 17 EUR / month).

- In its advertising posters, the defendant used a big picture of a red tear, in which a similar offer was made by writing in white letters within the red tear: "telephony + internet promo pack for only 20 EUR / month*". The asterisk referred to small print at the bottom of the poster, in which a similar requirement was stated (connection to the defendant's cable network for equal price).

This way, according to the plaintiff, the reference to the specific conditions of the promotional action was profoundly overshadowed by other aspects of the advertisement.

Legal issue

(1) As regards the radio commercial, the court referred to the limitations in space or time of a radio commercial. However, the court stated that simply referring to the general telephone number and the website of the defendant is insufficient to make the material information available to consumers. In the court's view, the average consumer will expect to be able to obtain the promo pack for 20 EUR / month, without any additional compulsory connection amounting to 17 EUR / month.

(2) The court equally rejected the use of the small print on the posters. The court stated that the overall impression of the average consumer is that he can enjoy the offer for 20 EUR / month. The specific conditions of the promotional action, although present at the bottom of the poster, are therefore completely overshadowed by the general impression the poster makes.

Decision

(1) Under which circumstances does a trader breach the prohibition on misleading omissions when, taken into account that the communication medium used imposes limitations in space or time, the trader refers to his website or his general telephone number to consult the specific conditions?

(2) Does a trader breach the prohibition on misleading advertising by referring to the specific conditions of the commercial offer, which are shown in fine print and are overshadowed by the general impression of the advertisement?

URL: <http://zoeken.rechtspraak.nl/ResultPage.aspx>

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Result

The advertisements were found to be misleading.