

Case law

Case Details

National ID: 14-26095

Member State: France

Common Name: link

Decision type: Supreme court decision

Decision date: 05/07/2016

Court: Court of Cassation

Subject:

Plaintiff: Darty

Defendant: Cap boulanger (Media Saturn France)

Keywords: advertising, comparative advertising, price

Directive Articles

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

Headnote

(1) The requirement for objectivity does not imply an obligation to provide the consumer with information on the criteria for determining the price.

(2) The slogan "stingier, smarter" does not imply generally lower prices.

(3) The indication, in small characters, of the temporary nature of the displayed prices is sufficient to inform the average consumer of the validity of said prices when the advertisement is disseminated via the written press.

(4) Lowering the prices in certain stores for a limited period of time for the sole purpose of comparative advertising does not constitute a misleading advertising.

(5) The burden of proof in respect of the difference between the compared products falls upon the claimant.

(6) A comparative advertising based on price comparison, which indicates a price lower than that the one applied necessarily alters the consumer's behavior.

Facts

The defendant disseminated an advertising which compared its own electric and multimedia products with products sold by the plaintiff, stating that it sold the compared products at cheaper prices.

Legal issue

The Court of Cassation upheld the Paris Court of Appeal's rejection of the plaintiff's claim, on the grounds that the latter had intensively disseminated for years information on other elements characterizing its offer (warranty, after-sales service, hotline, returns, free home delivery) the consumer being therefore capable of objectively determining the differences between the offers without needing precise information on the criteria for determining the price.

The Court of Cassation also upheld the ruling of the Paris Court of Appeal's rejection of the plaintiff's claim based on the facts that:

- the advertising was limited to specific products and did not claim that the defendant's prices were generally lower,
- the means of dissemination of the advertisements (written press) allowed the average consumer who has the time to read their content and understand that the prices were part of a promotional offer limited in time even if such information was written in small characters,
- nothing required that the defendant justify that the advertised prices were already applied at the date of the price survey carried out within the plaintiff's stores.
- although establishing the characteristics of the competitor's product, plaintiff did not prove how its own product is different.

However the Court of Cassation overturned the ruling of the Court of Appeal in-so-far as it considered that the difference between the advertised prices and the prices actually applied did not impact the consumer's behavior.

Decision

(1) Does the requirement for objectivity not imply an obligation to provide the consumer with information on the criteria for determining the price ?

(2) Does the slogan "stingier, smarter" imply generally lower prices ?

(3) Is the indication, in small characters, of the temporary nature of the displayed prices sufficient to inform the average consumer of the validity of said prices when the advertisement is disseminated via the written press ?

(4) Does lowering the prices in certain stores for a limited period of time for the sole purpose of the comparative advertising constitute a misleading advertising ?

(5) Does the burden of proof as to the difference between the compared products fall upon the claimant or the defendant ?

(6) Does the indication, in a comparative advertising based on price comparison, of a price lower than that the one applied alter the consumer's behavior ?

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Result

Plaintiff's claim was partially granted.