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Press and Information

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Judgment of the Court of Justice in Case C-356/04

Lidl Belgium GmbH & Co KG v Etablissements Franz Colruyt NV

**COMPARATIVE ADVERTISING CAN RELATE COLLECTIVELY TO
SELECTIONS OF PRODUCTS**

However, in certain cases such comparative advertising may be misleading

Lidl and Colruyt both operate in Belgium a chain of stores which essentially retail basic consumables.

Lidl brought proceedings before the Rechtbank van Koophandel te Brussel (Brussels Commercial Court) in order to obtain an order requiring the cessation of various practices engaged in by Colruyt that constituted comparative advertising. That court referred to the Court of Justice of the European Communities for a preliminary ruling a number of questions on the interpretation of the European directive concerning misleading and comparative advertising.¹

Two methods of comparative advertising are at issue in the main proceedings.

In the case of the first method, Colruyt compares the general level of the prices charged by itself and its competitors in respect of their ranges of comparable products and infers from this the amount that consumers can save. Their general price levels are determined monthly, then annually, on the basis of a daily record of the individual prices of a very wide sample of basic consumables, whether identical (branded products) or similar (unbranded products or the chain's own brand).

The second method of advertising is based on the assertion that all of Colruyt's products that have a red label bearing the word 'BASIC' are sold by it at the lowest price in Belgium. This selection of products consists of, first, branded products and, second, products sold unbranded or under Colruyt's own brand name.

¹ Council Directive 84/450/EEC of 10 September 1984 (OJ 1984 L 250, p. 17), as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 (OJ 1997 L 290, p. 18).

First of all, the Court recalled that, since comparative advertising helps to demonstrate objectively the merits of the various comparable products and thus stimulate competition between suppliers of goods and services to the consumer's advantage, it is settled case-law that the conditions required of comparative advertising must be interpreted in the sense most favourable to such advertising.

The Court held that **the directive does not preclude, in principle, comparative advertising from relating collectively to selections of basic consumables sold by two competing chains of stores in so far as those selections each consist of individual products which, when viewed in pairs, individually satisfy the requirement of comparability.**

While the directive does not have the effect, in such a case, that the products and prices compared, that is to say both those of the advertiser and those of all of his competitors involved in the comparison, must be expressly and exhaustively listed in the advertisement, it does require, on the other hand, that the advertiser indicate where and how the persons to whom the advertisement is addressed may readily examine the details of the comparison with a view to verifying their accuracy or having it verified.

The Court also held that comparative advertising claiming that the advertiser's general price level is lower than his main competitors', where the comparison has related to a sample of products, may be misleading when the advertisement:

- does not reveal that the comparison related only to such a sample and not to all the advertiser's products,
- does not identify the details of the comparison made or inform the persons to whom it is addressed of the information source where such identification is possible, or
- contains a collective reference to a range of amounts that may be saved by consumers who make their purchases from the advertiser rather than from his competitors without specifying individually the general level of the prices charged, respectively, by each of those competitors and the amount that consumers are liable to save by making their purchases from the advertiser rather than from each of the competitors.

It is for the national court to determine whether the advertisements at issue in the main proceedings display such characteristics.

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Languages available: FR, CS, EN, DE, PL, NL, HU, SK, SL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-356/04>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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