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Press and Information

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Judgment of the Court of Justice in Case C-381/05

De Landtsheer Emmanuel SA v Comité Interprofessionnel du Vin de Champagne, Veuve Clicquot Ponsardin SA

COMPARATIVE ADVERTISING BETWEEN PRODUCTS WITHOUT DESIGNATION OF ORIGIN AND PRODUCTS WITH SUCH DESIGNATION IS POSSIBLE IN CERTAIN CASES

A reference in an advertisement to a type of product and not to a specific undertaking or product can be considered to be comparative advertising

Directive 84/450/EEC concerning misleading and comparative advertising permits, subject to certain conditions, comparative advertising, defined as ‘any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor’.¹

In the present case, the Belgian company De Landtsheer SA produces and markets several varieties of beer under the trade mark Malheur. In 2001 it launched a beer under the name ‘Malheur Brut Réserve’, which was brewed using a process based on the production method for sparkling wines.

De Landtsheer used, in particular, the wording ‘BRUT RÉSERVE’, ‘La première bière BRUT au monde’ (‘The first BRUT beer in the world’), ‘Bière blonde à la méthode traditionnelle’ (‘Traditionally-brewed light beer’) and ‘Reims-France’ and also a reference to the winegrowers of Reims and Épernay. In using the expression ‘Champagnebier’, De Landtsheer wished to make the point that it was a beer made according to the ‘méthode champenoise’ (champagne method). Moreover, De Landtsheer extolled the originality of the new beer, Malheur, by ascribing to it the characteristics of a sparkling wine and, in particular, those of champagne.

On 8 May 2002, the Comité Interprofessionnel du Vin de Champagne (CIVC) and Veuve Clicquot Ponsardin SA brought an action against De Landtsheer before the Tribunal de commerce (Commercial Court) of Nivelles (Belgium), seeking, in particular, a prohibition on the use of the wording set out above. Such a use was, it was claimed, not only misleading but also amounted to comparative advertising that was not permitted.

¹ Article 2(2a) of the directive (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 (JO 1997 L 290, p. 18).

By judgment of 26 July 2002, the Tribunal de commerce ordered De Landtsheer, inter alia, to cease all use of the wording 'Méthode traditionnelle', the designation of origin 'Champagne', the indication of provenance 'Reims-France' and of the references to the winegrowers of Reims and Épernay and to the method of producing champagne. The CIVC and Veuve Clicquot's claim concerning the use of the wording 'BRUT', 'RÉSERVE', 'BRUT RÉSERVE' and 'La première bière BRUT au monde' was rejected.

De Landtsheer withdrew its use of the designation of origin 'Champagne' in the expression 'Champagnebier' but it appealed against that judgment in relation to all other elements of the case. The CIVC and Veuve Clicquot brought a cross-appeal relating to the use of the wording 'BRUT', 'RÉSERVE', 'BRUT RÉSERVE' and 'La première bière BRUT au monde'.

The Cour d'appel (Court of Appeal), Brussels, referred a number of questions to the Court of Justice of the European Communities for a preliminary ruling. The national court asked essentially whether Directive 84/450/EEC must be interpreted as meaning that a reference in an advertisement to a type of product and not to a specific undertaking or product can be considered to be comparative advertising

The Court has replied in the affirmative: such a reference can be considered to be comparative advertising where it is possible to identify an undertaking or the goods that it offers as being actually referred to by the advertisement. The fact that a number of the advertiser's competitors or the goods or services that they offer may be identified as being in fact referred to by the advertisement is of no relevance for the purpose of recognising the comparative nature of the advertising.

In addition, the national court asked, in particular, whether the directive must be interpreted as meaning that, for products without designation of origin, any comparison which relates to products with designation of origin is not permitted. One of the conditions laid down by the directive which must be satisfied in order for comparative advertising to be permitted is that, for products with designation of origin, it relates in each case to products with the same designation.

The Court recalled in that regard that it is settled case-law that **the conditions required of comparative advertising must be interpreted in the sense most favourable to it**. Moreover, it noted that a further condition laid down by the directive which must be satisfied in order for comparative advertising to be permitted is that it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products. According to the Court, the effectiveness of that requirement would be partly compromised if products without designation of origin were prevented from being compared to those with designation of origin.

The Court held that where all the other conditions governing whether comparative advertising is permissible are met, protection of designations of origin which would have the effect of prohibiting absolutely comparisons between products without designation of origin and others with designation of origin would be unwarranted and could not be justified under the provisions of the directive.² The Court concluded that **for products without designation of origin, any comparison relating to products with designation of origin is not impermissible**.

² More specifically, Article 3a(1)(f) of the directive.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, BG, CS, DE, EN, ES, EL, HU, IT, NL, PL, PT, PO, 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-381/05>

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

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