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Press and Information

Advocate General's Opinion in Case C-632/16
Dyson Ltd, Dyson BV v BSH Home Appliances NV

Advocate General Saugmandsgaard Øe proposes that the Court holds that suppliers and dealers of vacuum cleaners may not use supplementary labels which reproduce or clarify the information contained in the energy label provided for in an EU regulation

In addition, the Directive on unfair commercial practices does not apply to the specific aspects of unfair commercial practices governed by the regulation, since it does not leave any leeway to the traders concerned

Since 1 September 2014, all vacuum cleaners sold in the EU have been subject to energy labelling requirements, the detailed rules of which have been fixed by the Commission in a regulation supplementing the Directive on energy labelling.[1] The energy labelling is aimed, among other things, at informing consumers of energy efficiency levels and cleaning performances of vacuum cleaners.

The company Dyson markets vacuum cleaners which operate without a dust bag, while BSH markets, under the trade marks Siemens and Bosch, conventional vacuum cleaners which operate with a dust bag.

Dyson challenges the energy labelling of the vacuum cleaners marketed by BSH. That labelling reflects the results of energy efficiency tests carried out with an empty dust bag, in accordance with the regulation. Dyson considers that the energy labelling of those vacuum cleaners misleads consumers since, under normal conditions of use, the pores of the bag become clogged when it fills with dust so that the motor must generate more power to maintain the same suction. Moreover, the vacuum cleaners marketed by Dyson, which operate without a dust bag, are not affected by that loss of energy efficiency under normal conditions of use.[2]

Dyson brought an action against BSH before the rechtbank van koophandel te Antwerpen (Commercial Court, Antwerp, Belgium). That court has asked the Court of Justice whether, in the light of the Directive on unfair commercial practices,[3] BSH is misleading consumers by failing to mention that the tests were carried out with an empty dust bag. The rechtbank van koophandel te Antwerpen notes, moreover, that BSH strictly complied with the provisions of the regulation and enquires whether the addition of such a reference would be compatible with the provisions of the regulation which establish the format and content of the label.

In today's Opinion, **Advocate General Henrik Saugmandsgaard Øe considers that the regulation gives manufacturers and dealers no leeway whatsoever in terms of the format**

[1] Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners (OJ 2013 L 192, p. 1).
[2] Dyson also brought before the General Court of the European Union an action for annulment in which it challenged the validity of the regulation (Case T-544/13). After setting aside the judgment of the General Court of 11 November 2015 in that case (see also Press Release 133/15), the Court of Justice referred the case back to the General Court for reconsideration Case: C-44/16 P Dyson v Commission,. The General Court has not yet delivered its judgment.
[3] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22).

and content of the energy label, meaning that they cannot specify the conditions under which the tests that led to the vacuum cleaner's energy classification were performed.

The Advocate General notes in that regard that use of the energy label is compulsory. Moreover, the label must comply with all the requirements of the regulation as regards both its format and the information to be included in it. According to the Advocate General, by adopting the regulation, the EU legislature made a deliberate choice as to the information to be provided to consumers by way of the energy label. The methodology used for measuring the energy performance of vacuum cleaners is not included among the information chosen by the legislature to be provided to consumers.

Moreover, the Advocate General concludes that **the regulation precludes the use of supplementary labels which reproduce or clarify the information on the energy label.** He takes the view that allowing manufacturers or dealers to use supplementary labels would call into question the objective of the regulation, namely the standardisation of the information provided to end users with respect to the consumption of energy and other essential resources. The Advocate General makes clear, however, that that interpretation is exclusively concerned with information falling within the scope of the regulation. He therefore considers that the regulation does not preclude the provision of information which falls outside its scope such as, for example, the selling price, place of manufacture or duration of the warranty.

Finally, the Advocate General examines whether the use of the energy label in accordance with the regulation (that is to say, without specifying the conditions under which the tests were performed) can constitute a misleading omission within the meaning of the Directive on unfair commercial practices.

The Advocate General concludes that the directive is not applicable to the specific aspects of unfair commercial practices governed by EU rules that do not leave any leeway to the traders concerned, such as the obligation to use the energy label and the prohibition on using supplementary labels which reproduce or clarify the information contained in the energy label. **For that reason, it is not necessary, in his view, to determine whether a misleading omission within the meaning of the directive exists**.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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