



**Not providing consumers with information on the testing conditions that resulted in the energy classification indicated on the energy label of vacuum cleaners does not constitute a ‘misleading omission’**

*In addition, suppliers and dealers of vacuum cleaners may not use supplementary labels which reproduce or clarify the information displayed on the energy label where it could mislead or confuse the consumer with respect to energy consumption*

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.<sup>1</sup> 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 the company 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. 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.<sup>2</sup>

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,<sup>3</sup> the act of not providing consumers with information on the testing conditions that resulted in energy classification indicated on the energy label constitutes a ‘misleading omission’. The rechtbank van koophandel te Antwerpen notes, moreover, that BSH is merely complying with the provisions of the regulation.

Furthermore, the Belgian court notes that BSH adds, next to the energy label, several labels or symbols that are not provided for in the regulation, namely, a green label stating ‘Energy A’, an orange label stating ‘AAAA Best rated: A in all classes’ and a black label with the image of a carpet and stating ‘class A Performance’. It questions, in essence, whether EU law authorises such a practice.

<sup>1</sup> 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).

<sup>2</sup> Dyson also brought before the General Court 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 Press Release No [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.

<sup>3</sup> 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 2 (‘Directive on unfair commercial practices’) (OJ 2005 L 149, p. 22).

In today's judgment, the Court finds first of all that the directive and the regulation must be interpreted as meaning that **no information relating to the conditions under which the energy efficiency of vacuum cleaners was measured may be added to the energy label.**

In that regard, the Court notes that the regulation precisely lays out the design and content of the label and provides that only a reproduction of the EU Ecolabel may be added to it. That harmonisation is aimed at ensuring better legibility and better comparability of the information contained on it for the benefit of the end-user. The regulation therefore prohibits references other than the reproduction of the EU Ecolabel from being added to the energy label, including any information on vacuum cleaner energy efficiency testing conditions.

So far as concerns the absence, from places other than the energy label, of information concerning testing conditions, the Court finds that a 'commercial practice' within the meaning of the Directive on unfair commercial practices is to be regarded as misleading only if the information is deemed material. However, in the exhaustive list of information that must be brought to consumers' attention by means of the energy label, the regulation does not mention testing conditions. It follows that such information cannot be regarded as material and that **the lack of reference to a vacuum cleaner's testing conditions is not capable of constituting a misleading omission.**

Next, the Court examines whether the regulation prohibits the display, in a place other than the energy label, of labels or symbols recalling the information contained on that energy label, as BSH has done. The Court finds that such display is prohibited if (i) those labels or symbols do not comply with the requirements of the directive and (ii) it is likely to mislead or confuse end-users with respect to the consumption of energy.

**The Court holds that the labels or the symbols displayed by BSH on the packaging of the vacuum cleaners it markets do not satisfy the requirements of the directive. Moreover, although it is for the referring court to determine whether such display risks misleading users, the Court notes that the fact that the symbols used by BSH are not graphically identical to those used on the energy label and that they repeat the same information while using a distinct graphic could give the impression that they convey different information.**

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**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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