



Price comparison must take into account the different characteristics of shops

Judgment of the Court of Justice of the European Union of 8 February 2017 (Case C-562/15)

Background

The judgment in question corresponds to a widespread advertising campaign in France, as part of which Carrefour Hypermarchés compared the prices of 500 leading brand products in its shops and in the shops of competitors, including those belonging to ITM Alimentaire International. The campaign showed that products sold by the latter were systematically more expensive than those sold at Carrefour; however, it did not clearly and precisely inform the consumer that the ITM establishments selected for the comparison were all supermarkets, whereas its own shops were all hypermarkets.

ITM filed an appeal on the grounds of unfair competition before the Tribunal de Commerce de Paris (Commercial Court, Paris), which condemned Carrefour on the understanding that the method of selecting shops was deceitful and that the information provided to the consumer made it impossible to clearly establish that the comparison involved different sized establishments, distorting the representativeness of the prices used in the comparison. Carrefour appealed the judgment before the Court of Appeal of Paris, which referred the matter to the European Court of Justice (CJEU) for a preliminary ruling to establish whether price comparisons are only lawful when analysing prices used by shops of a similar size.

Conclusions of the CJEU

The CJEU started by offering a reminder that comparative advertising stimulates competition in the consumer's benefit; therefore, the requirements to be employed in said form of advertising (included in Directive 114/2006/EC concerning misleading and comparative advertising) should be interpreted in the sense most favourable to the advertiser.

Based on this idea, the CJEU concludes that a comparison between the prices employed by shops of different sizes is not unlawful *per se*, given that the directive does not establish said requirement and, what's more, the information contributes to the purposes of Community legislation. However, the method of selecting shops can distort the objectivity of the comparison, given that the prices of consumables often vary depending on the size of the shop. Therefore, the court believes that it is essential that said information is made available to the consumer to ensure that the comparison is consistent with the principle of objectivity

Concerning the level of detail of the information to be provided, the national courts are responsible for establishing the sufficiency thereof; however, it must be included in the advertising material itself and not offered in a way that is unclear, unintelligible, ambiguous or untimely.