[FR] Comparative Advertising Indicating Prices Charged by an identifiable Competitor

IRIS 2001-6:1/35

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During an advertising campaign, the company Cegetel 7 claimed that its long-standing competitor, the company France Télécom - the identifiable target of its advertisingwas using pricing practices left over from an outdated monopolistic situation that no longer corresponded to reality. France Télécom felt that the campaign constituted unfair competition and infringed the regulations on comparative advertising, and had Cegetel 7 summoned to appear in court to be ordered to put a stop to the disputed advertising, or be fined if it continued. The Court of Appeal in Versailles ordered the defendant company to stop using the disputed advertising. The court of cassation rejected the final appeal brought by the company Cegetel 7. Cegetel 7 argued that in the case of a comparison involving prices, all that was prohibited was comparative advertising for products, excluding services, where the comparison did not satisfy the legal requirements. In the present case, the disputed advertising campaign on charges applied to telephone calls, ie the prices charged for a service, and could not therefore be considered as comparative advertising.

The court of cassation did not follow the same reasoning. It found that the provisions of Article L. 121-8 of the Consumer Code, covering comparative advertising, did apply to advertising that compared the prices for services offered by an identifiable competitor, which was the case here. The court of appeal was therefore right in sanctioning the disputed advertising; not because it advertised the merits of the competition but because it did not constitute a fair and truthful presentation. The court of cassation therefore decided that this advertising did indeed constitute unlawful comparative advertising.

Cour de cassation (chambre commerciale), 27 mars 2001 - Cegetel 7 c/ France Télécom

Court of cassation (commercial chamber), 27 March 2001 Cegetel 7 v. France Télécom

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