[NL] Cable Operator's Comparative Advertising Judged Unlawful

IRIS 2006-8:1/26

Brenda van der Wal
Institute for Information Law (IViR), University of Amsterdam

The District Court of Arnhem delivered its judgment on a case pitting Dutch cable operator UPC against Dutch telephone and Internet provider KPN. It ruled that UPC's comparative advertising is unlawful towards KPN. In commercials, which appeared on radio and television, on the Internet and in advertising leaflets, UPC offered the possibility to telephone via its television cable network, explicitly mentioning as an advantage that customers no longer need KPN's services.

KPN filed a suit against UPC arguing that by using the "KPN" logo in a denigrating manner the cable operator infringed its trademark as such use does not amount to legitimate use of the trademark. KPN therefore also concluded that the advertisements constituted unlawful comparative advertising. Finally, KPN argued that the claim "750.000 telephone and Internet users have switched over already" suggests that UPC has more subscribers than it in fact has, and is therefore unlawful on the grounds of misleading advertising.

According to the District Court, UPC's claim of having 750.000 telephone and Internet subscribers is not incorrect and therefore not misleading. The District Court decided that UPC did violate KPN's trademark and that the comparative advertising was unlawful. Using the trademark "KPN" in comparative advertising is allowed insofar as it is necessary to make the comparison. The comparison however was not at the forefront; the supposed superfluity of KPN was the most important message in the advertisement. UPC was therefore ordered to refrain from using the advertisements and distributing the leaflets in the future. KPN' s demand for a rectification in newspapers, on UPC 's website and on television were rejected because UPC has already stopped using the advertisements for a considerable time.

LJN: AY6501,Voorzieningenrechter Rechtbank Arnhem , 142718

http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AY6501

Decision of the District Court of Arnhem no. 142718 KG ZA 06-433 of 16 August 2006

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026