[FR] Conditions for Legality of a Comparative Advertising Campaign

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In a decision of 20 March 1997 the Court of Appeal in Aix-en-Provence has severely reminded the company E. Leclerc of the conditions for the legality of comparative advertising. Without notifying its direct competitor Carrefour , the company had issued posters showing two shopping trolleys filled with foodstuffs bearing the labels E.

Leclerc and Carrefour . The second, which was much smaller than the first, was marked "E. Leclerc cheaper than Carrefour Vitrolles" and "prices for first quarter 93". The Court of Appeal, upholding the judgment of the court of first instance, penalised the failure to give a competitor advance notice of an advertising project; this obligation is contained in Article L 121-14 of the Consumer Code. Apart from this obligation, which the Court interpreted to the letter, the decision also includes details on the basic conditions governing comparative advertising where prices are involved. The comparison must concern identical products sold under the same conditions and indicate the period during which the advertiser maintains the prices indicated as his. Here the reference in April 93 to prices used during the previous quarter did not, by its retrospective nature and by reason of the extreme variability of prices in the retail distribution sector, meet this last requirement. Reparation for these shortcomings is to take the form of a payment of FRF 5 million in damages to the company Carrefour .

Cour d'appel Aix-en-Provence, 20 mars 1997 Société Maridis et al. v. Société Carrefour Vitrolles

Court of Appeal in Aix-en-Provence, 20 March 1997; Société Maridis et al. v. Société Carrefour Vitrolles

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