

PORTUGAL



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1. Self - Regulation (Rules)	
Topic:	Cooperation Protocol
Who:	ICAP/UEFA/EURO 2004, SA
When:	May, 2004
Where:	Portugal
What Happened:	<p>The ICAP (Civil Institute of Self Regulation in Advertising), UEFA (Union des Associations Européennes de Football) and Euro 2004, SA (Promoting Entity in Portugal of the European Championship of 2004), entered into a cooperation protocol taking into consideration the relevance of the this sporting event (the third biggest Sporting event in the world and the biggest ever to be held in Portugal) and the need to prevent the abuses that often occur with these events, in particular the violation of the rights that are granted with it. The protocol was destined for the parts to promote the advertising law and ethics especially in what concerns promotion campaigns that, in any way relate to the Euro 2004.</p> <p>In order to accomplish these goals, the entities undertook to cooperate with a view to: divulging information on the rights and duties at stake, together with the advertising agencies, advertisers and others; interchanging opinions on advertising campaigns; promoting the call for mediation performed by ICAP; the support to the complaint system of the ICAP; sensitize all entities of the importance of obtaining opinions on the legality advertising campaigns; issuance of recommendations to stop infringing or censurable advertising.</p>
Comments:	This cooperation protocol is a clear sign that all responsible entities are alert to the advertising problems and are actively combating them by establishing adequate preventive measures.

2. Self - Regulation (Rules)	
Topic:	Misleading Comparative Advertising
Who:	The Jury of the Civil Institute of Self Regulation in Advertising (ICAP)
When:	June 2004
Where:	Portugal
What Happened:	<p>A television advertisement for a well known detergent trademark stated: "Discover the glow that eclipses all others". A competitor company considered this advertisement to be misleading comparative advertising and therefore presented its complaint.</p> <p>This company sustained that this advertisement, by referring to "all others" implicitly identified other detergents, thus comparing the two detergents. Pursuant to article 16º, nº 1 of the Advertising code "it is of comparative nature</p>

	<p>the advertisement which identifies, explicitly or implicitly, a competitor or goods or services offered by a competitor”.</p> <p>Hence, if a company advertises by comparing its product with a genre of products it is not doing comparative advertising because it does not refer to a specific product. In other words the simple statement that a product is superior to all others is not comparative advertising but mere superlative advertising. This may be valid as a general thesis, but does not stop the consideration that in certain market structures, namely the ones of oligopoly, any generic comparison made by a competitor will be understood by the addressees as comparative advertising of the two or three known competitors, holders of the market power. However, comparative advertising is allowed by the Portuguese Advertising Code, only with certain limitations, one of them, that it is not misleading. The issue in this case was to know whether it was licit to make such a statement. Words such as “eclipses” are merely hyperbolic formulas, normal in advertising language. Although according to the Advertising Code the burden of proof on the veracity of the statements made lies on the company advertising the product, the procedural rules state that the burden of proof of the facts alleged lies on the complainant. As the advertising company proved its statement and the complaining company did not proof the intended refutation, the decision was to consider the advertisement licit.</p>
Comments:	<p>Two particular issues analyzed in this decision seem of greater importance than the decision itself. Besides the main analyses of the case, ICAP sets out the criteria for implicit comparative advertising and also the rules for the burden of proof in these cases, thus establishing some important rules for future cases.</p>

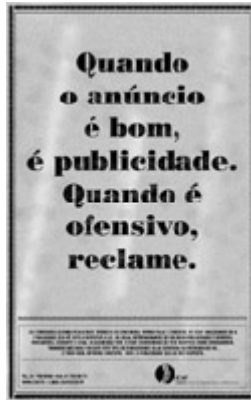
3. Self - Regulation Case Report	
Topic:	Deceiving Advertising
Who:	The Jury of the Civil Institute of Self Regulation in Advertising (ICAP)
When:	June, 2004
Where:	Portugal
What Happened:	<p>A telecommunications company launched an advertisement both in television and newspapers that stated that they were offering free calls during the night period and week-ends, for the ones that signed up to the service, only for 7 euros per month. A competitor company complained since it considered that this advertisement was in violation of the Decree-Law n.º 138/90, pursuant to which in any sale of goods and services the price must be clearly and visibly shown in the currency with legal course in Portugal, including taxes. Moreover, it considered that the advertisement was misleading since there were no free calls due to the fact that 7 euros were always due and special visual and sound effects were given to the statement “free calls”. According to articles 10º and 11º of the Advertising Code and article 14 of the Code of Conduct, the advertising message “should ban any declaration or presentation that, directly or indirectly, by omissions or ambiguities, or exaggerations may mislead the consumer” especially in what concerns the “value of the good or service to be effectively paid”. One should understand the consumer, as addressee of an advertisement, as the medium consumer, normally informed and aware. Therefore, the reference to free calls provided that they signing up of a service for 7 euros per month, seems clearly misleading since what is advertised as free should not be object of any need of payment. In this case, the Jury considered that there was no violation of the aforementioned Decree-Law,</p>

	since the total price was the one indicated despite the fact that there was no indication of what was the amount of taxes that were being paid, namely VAT. They also considered that some references made in small print were sufficiently legible, both in the TV spot and the paper advertisement to be read by consumers. However, the problem of the gratuity of the calls should be censured.
Comments:	As in last year, the area of telecommunications continues to be the stage for many complaints of violation of the principles of advertising originated by the strong competition in this area. This decision also helps clarify the some specific rules concerning the advertising of prices, one of the key issues in consumer choices.

4. Self - Regulation Case Report	
Topic:	Defamatory Comparative Advertising
Who:	The Jury of the Civil Institute of Self Regulation in Advertising (ICAP)
When:	June 2004
Where:	Portugal
What Happened:	An advertisement of a supermarket company presented animated products trying to escape to another supermarket through a whole in the wall and being caught by the supervisor or manager of the establishment. Another advertisement of a competitor company now shows the manager tied up and the animated products running away to another supermarket, shouting: "Look at these prices, they are really low. And you don't have to sacrifice variety", "To have low prices; you do not have to sacrifice the rest". The first company complained to the ICAP since according to it, this company was illicitly using their former campaign and a defamation to them both by showing the hero of their campaign, the manager, tied up and by showing the products near a garbage place from which they escape, in the back of a supermarket, showing the supermarket as a less clean and proper place. The Jury of ICAP did not consider this as a defamatory advertisement since the statements used by the company were valid and did not show any clear defamatory intention of the competitor. Moreover, they also did not consider, as the complainant intended, that this advertisement was illicitly using the previous campaign and the image, good name and reputation of the competitor since there is no imitation or unauthorised copy, they are a mere new chapter of the story started by the first company. A work may be original both by creation <i>ex nihilo</i> , as by contemplation of a pre-existing work.
Comments:	This case clarifies that not all comparative advertising is bound to be defamatory just by comparing the product of one company with the one of its competitors. Also, companies should be aware that the same weapons that they use in advertising may be turned and used against them.

5. Self - Regulation Case Report	
Topic:	Consumers to play an active role in the control of advertising
Who:	ICAP
When:	June 2003
Where:	Portugal
What Happened:	ICAP has launched its own advertising campaign, which states the following: "When the advertisement is good, its advertising; when it is

offensive, complain.” This campaign was launched in all written press and intends to stimulate the complaints by consumers in order for them to obtain a swift, effective and gratuitous way of solving their litigation.



Comments:

This another very positive initiative by ICAP, in order to more effectively control advertising. This will now happen, not only through the complaints of competitor companies, which usually originate the proceedings, but also through consumer complaints. Thus, the level of public awareness will increase and therefore helping the responsible legal entities in the control of the advertising industry.