



BELGIUM

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Country Report

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1.	
Topic:	Comparative and Disparaging Advertising
Who:	Telecom operator BELGACOM vs. PLANET INTERNET
When:	March 2002
Where:	President Commercial Court Brussels
What happened:	<p>Belgacom requested the President to enjoin Planet Internet to cease the “Planet Freedom” launch campaign.</p> <p>Planet Internet had purchased big quantities of phone time with Belgacom for “Planet Freedom” in order to offer this time to its’ clients.</p> <p>The Planet Freedom service changes the way clients pay for phoning or surfing time to a telephone operator. They pay to the internet service provider.</p> <p>The ad of Planet Internet depicted a hand with middle finger pointing up with thereunder the words “<i>Finished with expensive surfing. Planet Freedom: surf up to 25 % cheaper</i>”. Radio spots, newspaper inserts, website and CD-rom contained similar messages.</p> <p>Belgacom found the ad to infringe the rules on comparative advertising. Belgacom also considered the ad to be disparaging through obscene gestures, through depicting Belgacom as expensive and by showing clients of Belgacom as being prisoners of Belgacom.</p> <p>The cease and desist Judge did not found the campaign to be disparaging.</p>

	<p>The finger to the air was not a reference to Belgacom. The fact that Belgacom equally conducts a campaign with a finger as “leitmotiv” was irrelevant, as it was a different finger with a serious intent, pedagogic, intellectual.</p> <p>The middle finger in the air had clearly a different intent. Today, still according to the President, such gesture is no longer denigrating, although it is still widely seen as unconventional, aggressive or impolite. The message is rather <i>“go to hell and/ or I am independent, I don’t let myself being dominated and rather a gesture of emancipation or freedom”</i>. The insult is on expensive phone time “in street language [quote /unquote literally from the Court Order]: <i>“fuck expensive surfprices” and not “fuck Belgacom”</i>.</p> <p>The showing of clients as prisoners by using “freedom” as a word was not unfair in view of the increasing liberalisation of the telecommunication market.</p> <p>Belgacom had also argued that the ad was misleading on 10% more surfing speed and 25% less cost of Planet Internet. This point was followed by the President, as the 10% speedier did not mention as compared to what the speed was higher. The Judge also found that 25% should be “up to” 25% and hence, is misleading. There was also misleading advertising withheld on the lack of mentioning the costs for membership, connection.</p> <p>In view of the many offers currently on the market, ads should be extremely carefully made if they engage in price comparisons.</p> <p>The cease and desist of the campaign was ordered.</p>
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2	
Topic:	Trade Name – Trademarks
Who:	Base Design vs. KPN Orange (Base)
When:	15 March 2002
Where:	President Court of Commerce Brussels
What happened:	<p>Mid January 2002 KPN Orange communicated the trademark and trade name change to “Base”.</p> <p>This trade name was used by Base Design and the latter opposed.</p> <p>Base Design is a communication agency and develops design and graphics. It uses since 1999 the name. KPN considers that nobody can monopolise the name Base and that the activities differ.</p>

	<p>Base emphasises that both companies operate in the communication market with some common clients and using same channels of communication. KPN found that the word Base alone or in combination was used as trade name and as trademark in almost any sector except telecom.</p> <p>KPN alleged that any distinctive sign can only be protected in its' specificity. Identical distinctive signs can exist next to one another. There is a use in a different sector and no danger of misleading with the public exists.</p> <p>The President seconded the arguments of KPN.</p>
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3	
Topic:	Unfair Use of trademark “Zippo” in advertising
Who:	Zippo Manufacturing Company (USA) vs. Establishments Jacques F. Maes
When:	4 February 2002
Where:	President Commercial Court Brussels
What happened:	<p>Zippo has a network of exclusive dealers for distribution of the lighters of the famous brand Zippo. JF Maes was a dealer of Zippo before but went bankrupt. JF Maes still distributes Zippos but the French company Zippo S.A. is now the exclusive distributor.</p> <p>In an ad for throwaway lighters, JF Maes used the word Zippo and showed a Zippo. Zippo found that JF profited from Zippo, associated itself with Zippo and attempted to obtain an undue advantage from the notoriety of Zippo.</p> <p>The President ruled that it is not prohibited as such to advertise with the use of trademarks that are sold by the advertiser. The existence of a contractual relation was not implied by doing so, according to the Judge.</p> <p>But the President retained the argument that Zippo should not have been mentioned as the first brand before all other. This was a clear choice because of the notoriety of Zippo and this is enforced by the image depicted of a Zippo lighter. He ordered the stop of the ad. The rectifying inserts requested by Zippo were declined as they were out of proportion according to the Judge</p>

4	
Topic:	Combined Offering
Who:	Mobile telecom operators Proximus and Mobistar vs. KPN Orange
When:	January 2002
Where:	President Commercial Court of Brussels President Court of Appeal of Brussels
What happened:	<p>In January 2002, KPN Orange offered all subscribers of a <i>My Talk 1</i>-subscription of 15 months the possibility to change their mobile phone for a new one (under some conditions). The promotion was a massive event in all media.</p> <p>Orange had technical reasons for doing this (operation of telephone services under a different norm than the one of Proximus & Mobistar).</p> <p>Both competitors filed a cease and desist complaint distinctly on the basis of the rules on combined (tied) offerings.</p> <p>The President of the Commercial Court refused both claims.</p> <p>Both competitors promptly appealed. On 29 January 2002, the Court of Appeal decided that the combined offer was illegal. The old mobile phone can only be exchanged for a new one on condition that a subscription is made. This is a tying arrangement. Even if the advantage for the user is limited to saving time (to find a purchaser for an old phone is not easy), it is an advantage and therefore a combined offer. It is not possible for the consumer to calculate how big the advantage is and consequently to offset the advantage to the price of a subscription with KPN Orange.</p> <p>The fact that other companies set up similar promotions does not heal the promotion.</p>

5	
Topic:	Promotions in the Blocked Period preceding the Half-Yearly Season's Sales Period
Who:	Five clothing shops vs. Pecotex-Mode
When:	January 2002
Where:	President Commercial Court Antwerp

What happened:	<p>Pecotex made a striking ad with the mentioning “decrease of the visits to cinema in Oezbekistan with 50 %. More explanations in our shops as from 2 January”</p> <p>The 50% and the Pecotex logo were dominant.</p> <p>The consumer gains the impression that Pecotex already grants 50% off.</p> <p>Pecotex tried to circumvent the blocked period preceding the Season’s sales. During this period, no price rebates can be announced or suggested for products that are seasons products.</p> <p>The competitors obtained the same day a favourable order on an ex-party / unilateral request basis.</p>
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6	
Topic:	Sales at a Loss – Combined Offer
Who:	DOMINO’S PIZZA vs. PIZZA HUT
When:	6 November 2001
Where:	Court of Appeal in Brussels
What happened:	<p>IN May 1999, Pizza Hut distributed a leaflet with two premiums that give right to two pizza’s for the price of one.</p> <p>Domino’s Pizza sued in May 1999 before the President of the Commercial Court of Brussels in order to obtain a stop-order on the grounds of sales at a loss and illegal combined offer.</p> <p>Pizza Hut defended successfully. The Judge found on 9 August 1999 that the Domino’s Pizza claim was impossible because Pizza Hut and Domino’s Pizza had settled pursuant to which both parties agreed not to attach each others ads and promotions.</p> <p>Domino’s Pizza found that the President had overseen the public order/policy of Trade Practices. Pizza Hut found the Appeal reckless and vexatious.</p> <p>On 6 November 2001, the Court of appeal accepted the claim because the settlement is null and void in view of the public policy nature of the Trade Practices Act.</p> <p>On the merits of the promotion, the Court found that Pizza Hut still makes 40% profits if two pizza’s are sold for the price of one. The starting date of validity on the premium was not indicated, but the end-date was and the Court found this ok. The Court agreed that a combined offer is</p>

	made by Pizza Hut; the reduction may not exceed one third. Therefore, two for the price of one is illegal and Domino's Pizza gained the appeal. A stop of the promotion was ordered.
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7	
Topic:	Passing off – Misleading Advertising – Deceiving with insufficient stock
Who:	Rolex vs. La Collection'heure
When:	3 December 2001
Where:	President of the Court of Commerce, Brussels
What happened:	<p>La Collection'heure advertised in spring 2001 for watches of all important brands at 40 % off and at sales prices.</p> <p>Rolex attacked this promotion as a misleading ad, misleading price reductions since the reference was not to the really practiced prices before, because the promotion passed off on the notoriety of Rolex and also because the promotion attracted customers with products where no sufficient stock was available.</p> <p>La Collection'heure counter-sued for reckless and frivolous action by Rolex.</p> <p>Rolex could prove through bailiff reports that la Collection'heure did not have sufficient Rolex' watches in stock and that the price reduction in fact was 10 to 20 % only.</p> <p>The Judge accepted all counts of the lawsuit, inclusive the argument of passing-off and ordered, besides the cease and desist, a publication in two Dutch language and two French languages publications of Rolex' choice.</p>

8	
Topic:	Applicable law on on-line promotions
Who:	Association of Belgian Travel Agencies Belgian Travel Organisation vs. Lufthansa and vs. American Airlines

Where:	Two Matters before the President of the Brussels Commercial Court
When:	March and May 2001
What happened:	<p>Fidelity actions (air miles) of several international airlines on their respective websites were the object of court suits.</p> <p>In a promotion for bookings on the net, airlines granted additional air miles if bookings were done on the websites. The customer received his/her tickets on-line and receives more air miles than the customer who books via a travel agency. Travel agencies could not give the same amount of air miles to the clients because the agencies could not book on-line.</p> <p>The President accepted a claim against Lufthansa in March 2001. This channel should not be a means to distort competition. The Website was clearly destined to the Belgian public as it was www.lufthansa.be. A similar claim against American Airlines was rejected by the same judge. The Website was www.aa.com. No proof was given that the sale occurred in Belgium, the Judge found; the site was localised in the USA and was reserved for North-Americans.</p> <p>One can deduct from the above that a promotion on-line will be scrutinized under Belgian law if the action itself takes place in Belgium.</p>