

POLAND



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1. Case Report	
Issue:	Advertising of medicinal products
Where:	Judgment of the Court of Appeals in Poznań rejecting the appeal from judgment of District Court
When:	14 September 2005
The facts of the case and settlement:	<p>In short, all advertising relating to a medicinal product:</p> <ul style="list-style-type: none">• must be compatible with the information listed in the product's characteristics;• must not be misleading, within the meaning of Council Directive 84/450/EEC (Official Journal L 250, 19.09.1984).• advertising to the general public of medicinal products which are only available on medical prescription is prohibited <p>BIOPRAZOL, a prescription drug, was advertised in a specialized magazine for doctors, informing that the medicine contained the active ingredient used <i>i.a.</i> for preventing peptic ulcer disease ("PUD"). The product characteristics of BIOPRAZOL however did not provide for PUD prevention. Company "B", which had a similar product but with a wider product characteristic, that did encompass PUD prevention, filed a complaint claiming that the producer of BIOPRAZOL (company "A") committed an act of unfair competition within the meaning of Article 16 of the Act on Combating Unfair Competition (advertising contrary to provisions of law). Both, District and Appeal Courts accepted the argumentation of B.</p> <p>The final award pointed that the advertising was seeking to circumvent law. The judges confirmed in the ruling that the registration with the competent authority concerns therapeutic indications of a medicinal product and not of its active ingredient. Hence it is only allowed to advertise (under specific conditions) the medicinal product itself and not its active ingredient.</p> <p>It's worth emphasizing that both courts stated that the advertising was misleading. It could create the erroneous conviction that the product is recommended for preventing PUD since the graphic form of the advertising was focused on the product and not additional information there under (the font used, its size and background color were intentionally merging). The judge appealed to his life experience to support the statement that text written with smaller font is rarely read. A's intention was thus to identify BIOPRAZOL with the characteristics of its active substance only.</p>
Comments:	True information may sometimes be considered misleading!

2. Case Report	
Issue:	Advertising of legal services
Parties:	Marek Śniegucki vs. Krislex
Where:	District Court in Łódź
When:	September 2006
The facts of the case and settlement:	<p>Poland's forbids advertising the services of barristers (<i>adwokat</i>) and legal counselors (<i>radca prawny</i>). Both are professions of public confidence, self-governing and offering a high level of services. To the contrary, it is allowed to advertise legal consultancy services, which may be conducted by any individual with a master degree in law.</p> <p>The plaintiff is a legal counselor. The defendant is a group of firms providing legal consultancy services under one name, the Krislex trademark. The advertising was a leaflet offered to pedestrians passing in front of the court premises. The leaflet stated <i>i.a.</i>:</p> <ul style="list-style-type: none"> - that Krislex is the “biggest country-range network of licensed legal offices”; - it has “Qualified lawyers for the best prices in the city”; - the company acts upon permits (providing a serial number); - “Barrister are too expensive? Check our prices”. <p>The plaintiff referred to the Act on Counteracting Unfair Competition seeking to prohibit Krislex unfair practices by distributing such leaflets in front of the court buildings. According to him such behavior also was detrimental to the authority of the court.</p> <p>The defendant refuted the claims referring to the internal structure of its enterprise: Krislex offices use the trademark upon a license agreement, thus only licensed firms are allowed to act under such name. It claimed that it acted legally distributing its leaflets and there is no basis for prohibiting it doing so.</p> <p>The judge recognized that Krislex is not allowed to call itself a “licensed office” since the activity it conducts does not require any license or authorization from public administration – consumers could thus be misled as to the firm’s qualification. The judge also ruled that Krislex cannot compare its prices to other subjects acting on the market. Nothing however precludes the leaflet distribution in proximity of the court buildings.</p> <p>The defendant appealed the judgment.</p>
Comments:	<p>For a certain time advertising of services provided by barristers and counselors was broadly discussed. One of the arguments raised in favor of allowing such advertising was the fact that those self-governing professions are powerless against aggressive advertisements of legal consultants. The above judgment illustrates a new mean at barristers and legal advisors disposal, protecting them against unfair competition.</p> <p>The award is equally important for the consumers’ protection – although judicial precedents are not binding for other courts in Poland, it may have certain influence in similar cases concerning regulated business activities, especially if the court of appeals confirms the first judgment.</p>

3. Case Report	
Issue:	Unfair advertising
Parties:	Procter & Gamble vs. Henkel
Where:	Judgment of the Court of Appeal in Warsaw
When:	February 2007
The facts of the case and settlement:	<p>The advertisement of a washing powder produced by Henkel stated, "Ariel Platinum contains active components of stain removers. This is why it removes so difficult stains better than other powders available on the market". Procter & Gamble accused Henkel of having committed an act of unfair competition by misleading advertising, since substances called <i>active components of stain removers</i> do not exist in reality. The defendant acknowledged that the name was invented for the purposes of the commercial. The defendant however argued that the purpose of the advertising was not to mislead, but to underline the effectiveness of the powder and the <i>active components of stain removers</i> was in fact a simplification.</p> <p>The judge verified all statements contained abbreviation in the advertising. The word <i>active</i> was Crucial. In the opinion of the court this word did not refer to the composition of the powder but to its effectiveness – it did not mean that the powder had the characteristics of a stain remover. <i>The claim of an ideal washing is probably a bit exaggerated, but it is allowed to say a little more than true, while advertising,</i> awarded the judge.</p>
Comments:	<p>The issue in the above case was to delimit the border between what constituted allowed exaggeration in advertising and what exceeded it. In our opinion the court erred in recognizing that the advertising did not inform the consumers on the composition of the powder but of its characteristics. The commercial stated explicitly that the powder contained a substance, which in fact does not exist. A person who has no knowledge of chemistry confronted with the use of a pseudoscientific term in the advertisement could be mislead and thus influenced by it.</p>