

Case C-381/05

De Landtsheer Emmanuel SA

v

**Comité Interprofessionnel du Vin de Champagne
and
Veuve Clicquot Ponsardin SA**

(Reference for a preliminary ruling
from the cour d'appel de Bruxelles)

(Directives 84/450/EEC and 97/55/EC — Comparative advertising — Identifying a competitor or the goods or services offered by a competitor — Goods or services satisfying the same needs or with the same purpose — Reference to designations of origin)

Opinion of Advocate General Mengozzi delivered on 30 November 2006 . . . I - 3119
Judgment of the Court (First Chamber), 19 April 2007 I - 3152

Summary of the Judgment

1. *Approximation of laws — Misleading and comparative advertising — Directive 84/450 (Council Directive 84/450, Art. 2(2a))*

2. *Approximation of laws — Misleading and comparative advertising — Directive 84/450 (Council Directive 84/450, Art. 2(2a), and 3a(1)(b))*
3. *Approximation of laws — Misleading and comparative advertising — Directive 84/450 (Council Directive 84/450, Art. 3a(1))*
4. *Approximation of laws — Misleading and comparative advertising — Directive 84/450 (Council Directive 84/450, Art. 2(2a), and 3a(1)(f) and(g))*

1. Article 2(2a) of Directive 84/450 concerning misleading and comparative advertising, as amended by Directive 97/55, is to be interpreted as meaning that a reference in an advertisement to a type of product and not to a specific undertaking or product can be considered to be comparative advertising where it is possible to identify that undertaking or the goods that it offers as being actually referred to by the advertisement. The fact that a number of the advertiser's competitors or the goods or services that they offer may be identified as being in fact referred to by the advertisement is of no relevance for the purpose of recognising the comparative nature of the advertising.
2. The existence of a competitive relationship within the meaning of Directive 84/450 concerning misleading and comparative advertising, as amended by Directive 97/55, between the advertiser and the undertaking identified in the advertisement cannot be established independently of the goods or services offered by that undertaking.

Whether there is a competitive relationship between undertakings depends on the finding that the goods that they offer have a certain degree of substitutability for one another.

(see para. 24, operative part 1)

In order to determine whether there is such a competitive relationship between

the advertiser and the undertaking identified in the advertisement, it is necessary to consider: the current state of the market and consumer habits and how they might evolve; the part of the Community territory in which the advertising is disseminated, without, however, excluding, where appropriate, the effects which the evolution of consumer habits seen in other Member States may have on the national market at issue, and, finally, the particular characteristics of the product which the advertiser seeks to promote and the image which it wishes to impart to it.

3. Advertising which refers to a type of product without thereby identifying a competitor or the goods which it offers is not impermissible with regard to Article 3a(1) of Directive 84/450 concerning misleading and comparative advertising, as amended by Directive 97/55. The conditions governing whether such advertising is permissible must be assessed in the light of other provisions of national law or, where appropriate, of Community law, irrespective of the fact that that could mean a lower level of protection for consumers or competing undertakings.

(see para. 56, operative part 3)

The criteria for establishing the existence of a competitive relationship within the meaning of Article 2(2a) of the directive are not identical to those for determining whether the comparison fulfils the condition in Article 3a(1)(b) of the same directive. Article 2(2a) assumes that there is a competitive relationship between undertakings, whereas Article 3a(1)(b) requires an individual and specific assessment of the products which are specifically the subject of the comparison in the advertisement before it can be concluded that there is a real possibility of substitution.

4. Article 3a(1)(f) of Directive 84/450 concerning misleading and comparative advertising, as amended by Directive 97/55, must be interpreted as meaning that, for products without designation of origin, any comparison which relates to products with designation of origin is not impermissible.

(see paras 31, 32, 42, 47, 49,
operative part 2)

Under Article 3a(1)(g), comparative advertising is to be permitted provided

that it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products. The effectiveness of that requirement would be partly compromised if products with-

out designation of origin were prevented from being compared to those with designation of origin.

(see paras 65, 66, 72, operative part 4)