

Austria – Supreme Court decision on comparative advertising inside a group of companies

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One of the bigger players on the Austrian market for shoes is composed of a number of companies, each of which covers different price-, quality- and style-segments. These companies have distinct firm names and partially operate with their own brands. The average consumer is unaware of the existing corporate interconnection, as the corporate identities do not indicate such a fact. A certain number of brands of the group are, however, simultaneously sold in more than one company of the group. Advertisements regarding these brands found themselves subject of a claim brought by a competitor based on the Unfair Competition Act.

One of the "lower-price companies" made a price comparison to brands sold in a "higher-price company", thereby creating the impression of a very reasonable offer on the market. The Supreme Court (OGH 13.9.2000, 4 Ob 197/00z, WBI 2001, 45) ruled this practice to be inadmissible, as all compared prices have been set by the same "economic subject" and were not the result of competitive activities on the free market. The advertisement is therefore misleading and does not comply with the strict standard to be applied to price comparisons.

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