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VERSENYHIVATAL

Misleading L'Oréal ads

The Hungarian Competition Authority (GVH) imposed a fine of HUF 150 million on L'Oréal Hungary. Information about certain products and their effects provided by the cosmetics world company was liable to mislead consumers.

In its proceeding, the GVH examined information about a number of L'Oréal products (Elsève Colour Protection Balsam, Summer Glow Body Lotion, Anticellulite Rollerball, Normaderm, Dercos AMINEXIL SP94™ hair loss treatment for men, Anthelios product line, La Roche-Posay brand, Aquasource Non Stop Deep Hydration Oligothermal, Revitalift Double Eye Lifting, Revitalift Double Lifting and Age Re-Perfect Pro-Calcium) provided during the period between 1 January 2007 and 18 July 2007. According to the investigation an important part of the information was liable to mislead consumers.

In many advertisements, L'Oréal made categorical, unconditional promises to all consumers in connection to the products in question and their effects. This conduct conveyed the message that the promised results could be surely expected for any consumers.

According to the GVH, if an undertaking makes a categorical statement, then:

- at the time of disclosure of the advertisement the undertaking must be able to prove that the statements corresponds to reality,
- the ad's statements must be based on results of scientific efficiency tests in a way that the statement itself determines whether it must be underpinned by subjective or objective efficiency tests,
- the results referred to for substantiating the statement provided in the advertisement must be true concerning almost 100% of the people tested,
- the test substantiating the statement must be carried out on an accepted sample size, considering consumers reached by the advertisement, under usual personal and material conditions.

As for the efficiency of the cosmetic products, we can distinguish between subjective and objective efficiency:

- what subjective assessment is provided about the product by people who take part in the assessment of the product and complete a self-assessment questionnaire (i.e. how participating people assess the product from their own subjective point of view);
- by using the product, what effects unequivocally underpinned by objective tests can be expected by consumers.

If an undertaking in the course of popularizing one of its cosmetic products wishes to show the effect of a positive feature of this product as a percentage (or in an other similar way), it is obliged to do it out in a manner, which ensures that

- consumers should have a clear knowledge of whether the test-result mentioned in the advertisement is based on a subjective or objective efficiency test,
- the statements of the advertisement are in complete compliance with the results and the circumstances of the test,
- at the time of the publishing of the advertisement the undertaking is able to prove that the statements correspond to reality.

The information providing practice that an undertaking, with the aim of popularizing a product, makes use of the results of subjective efficiency tests in a way that it does not reveal unequivocally to consumers that the results mentioned are based on subjective efficiency tests, is likely to manipulate consumers' choice in an unfair way. In particular the practice that in an advertisement an undertaking uses the subjective assessment of the consumers taking part in the test, while the objective efficiency results are less favourable than the subjective ones, will probably manipulate consumers' choice in an unfair way.

Also statements in advertisements which are based on subjective efficiency tests must be in complete compliance with the results of the test. A statement can be objected if it mixes up the different stages of subjective testing: i.e. if a certain percentage of the people participating in the test have perceived a certain degree of positive change, but only a minor part of them has reported about a really positive change, the other part has only perceived a low degree of change, while according to the overall effect of the advertisement a really positive change has occurred in all the cases.

According to the GVH, the undertaking has to thrive not to include in its advertisements statements that are not in accordance with each other. It may mislead consumers if somebody, pursuant to the opinion of only a few dozens of women who have taken part in a subjective efficiency test, suggests what x percentage of "women" think about a certain product or one of its features. The capability of these statements to mislead consumers can be lessened if the number of women interviewed is indicated in the same advertisement. At the same time the undertaking has to bear in mind that consumers mostly perceive, among the pieces of information provided in the advertisements, highlighted statements that are provided in a manner which is able to attract attention, e.g. provided in a headline. Parts that are almost hidden, written in small letters, though linked to the content of statements perceived by consumers, but provided far from them and in substantially smaller letters than those of the headline do not necessarily get through to consumers.

Since L'Oréal Hungary did not comply with the above-mentioned rules in many of its advertisements, the GVH imposed a fine of HUF 150 million on it. In its decision, the GVH took into account as an aggravating factor that the undertaking that was found guilty of infringing the provisions of the Competition Act, was a significant player of the market, it advertised many of its products in a misleading way and the infringing conduct was realised by means of intensive advertising activity. The misleading advertisements were available for several months and might have reached a significant number of consumers. At the same time it proved to be a mitigating factor that L'Oréal voluntarily modified some of its statements qualified as infringing still before the closing of the competition supervision proceeding.

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