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Websites rating and comparing lawyers are allowed

[INTERNET]

Cass., 1^{ère} Civ., 11 mai 2017

The Cour de Cassation (French Supreme Court) held on the 11th of May 2017 that a commercial website providing a rating service to compare lawyers does not infringe the profession's ethical rules on the grounds that said rules are solely applicable to lawyers. However, pursuant to consumer law, the information provided to the public must be fair, clear and transparent.

In 2012, the company Jurisystem created the website “avocat.net” (“avocat” means lawyer in French) to connect individuals looking for legal advice with lawyers. The National Council of Bars (CNB) sued Jurisystem to obtain compensation for damages as well as the prohibition of the service. The CNB mainly claimed that given the modalities of the service (comparison of lawyers, remuneration's mode, use of the domain name “avocat.net”), Jurisystem had infringed the mandatory rules of the profession of lawyer and had also implemented unfair practices.

In 2015, the Paris Court of Appeal forbade Jurisystem to compare lawyers as the lawyers' code of ethics prohibits comparative advertising. It considered that violation of an ethical obligation by a third party who is not a lawyer may constitute a tortious fault toward lawyers. However, the Cour de Cassation overturned the decision on this point: the ethical rule prohibiting comparative advertising aims to ensure lawyers' independence, dignity and integrity and it is therefore not binding for third parties who are not lawyers. The Court thus concludes that a website which is not exploited by lawyers is allowed to offer a comparator. Nevertheless, such website has to comply with consumer law and the Supreme Court recalls that information delivered online in the context of services comparison should be fair, clear and transparent. As the appeal decision was invalidated, the Versailles Court of Appeal will have to review the case to decide whether the said website complies with these obligations.

Likewise, the CNB claimed, on the basis of the ethical rules of the profession, that Jurisystem should be prohibited from being paid a commission or indirect share of the lawyers' fees as a result of the linking service. The Cour de Cassation held again that third parties who are not lawyers are not bound by professional ethical rules and the company's services remuneration was thus validated.

However, the Cour de Cassation confirmed that Jurisystem was guilty of unfair commercial practices.

First, the domain name “avocat.net” constituted a misuse of the lawyer title as well as an unfair commercial practice because users could incorrectly believe that the website is exploited by lawyers and that any service offered is performed by lawyers. The company was then forbidden from using it and the website was transferred to the address “alexia.fr”.



Also, the slogan “Lawyers comparator n°1 in France” constitutes an unfair commercial practice which may mislead consumers on the offered service because the service only compares lawyers who asked to be registered on the website whilst there are more than 56.000 lawyers in France. Even if the company asserted that numbers of criteria were taken into account by an algorithm in order to determine the lawyers’ global grade, the indexing and rating criteria were not clearly explained to the Court. Finally, the Cour de Cassation stated that the personal relationship between a client and his or her lawyer excludes any comparison for commercial purposes.

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