

Export and sales in the e-world

Comparison Websites

Centro Congressi Torino Incontra

European Law Group

November 19, 2015

SUMMARY

- Business model of Comparison Websites
- Strengths and Limits
- Legal regime in France

BUSINESS MODEL

- Numerous in countries with high purchase power and where the supply is abundant.
- 50% of e-trading (apart from food products)
- Used by consumers as well as traders to adjust their prices.
- Websites remuneration :
 - Number of clicks
 - Volume of sales : € 0,05 (CD and books) to € 0,70 (travels and bank services)
 - Right of entry charged to trading partners
- Meta search engines: new generation of comparison sites that search other search engines and databases containing the keywords provided by the user. The comparison is no longer on a selection of products or services but on comparison websites themselves (air transportation, tourism, etc.).

BUSINESS MODEL

Two categories of Comparison Websites:

- “**Comparison Services**”: Comparison of products/services that do not make any transaction with consumers. Remuneration by the product/service supplier.
- “**Comparative Websites**”: Comparison of products/services that may be bought out of the website (“Distance selling websites”). Remuneration by the product/service supplier as well as direct sale by the website itself.

STRENGTHS AND LIMITS

Strengths

- Comparison Websites now apply not only to products but also to services: insurance, internet and/or mobile phones, bank services, etc.
- Consumers can compare prices not only in their own country but also in foreign countries taking advantage from the free circulation of goods in the EU.

STRENGTHS AND LIMITS

Limits

- Generally remunerated under the form of a commission on the sales, websites are reproached to lack of transparency and to boost traders that pay the highest commission rather than those which favor the consumer.

- The use of international Comparison Websites entails risks for the consumers:
 - Mistakes or defaults of delivery.
 - Non application of the regulation of the consumer's country (protection of consumers, delays of withdrawal, end user manual, prohibited materials, etc.).
 - Non compliance with legislation applicable to some products (royalties on mass supports (CD)), importations quota limitations (alcohol, cigarettes, drugs, weapons, etc).
 - Local specificities: keyboards, standards applicable to cell phones, etc.
 - Troubles in after sale services (communication, costs and delays, etc).

- As opposed to products, the comparison of prices for services between different countries is hardly relevant.

LEGAL REGIME IN FRANCE

- Law of March 17, 2014 amending the Consumer Code (art. L111-5) creates an obligation for Comparison Websites to provide a loyal, clear and transparent information.
- Infringements are subject of an administrative fine ranging from € 3,000 to € 15,000.
- Project of decree under the recommendations from the National Council of Consumption (May 12, 2015).

LEGAL REGIME IN FRANCE

- The decree will apply to all Comparison Websites whether:
 - they do not sell the products/services (pure « Comparison Services)
 - or offer also the sale of products/services («Comparative Websites »)

- Comparative Websites are also liable to distance selling regulation(art. L 121.16 of consumer code).

LEGAL REGIME IN FRANCE

➤ Comparison Websites are liable to post the following elements on the site:

- Information concerning the product/service itself
- Information concerning the service of comparison
- Specific rubric detailing information
- Territoriality and language of information

LEGAL REGIME IN FRANCE

➤ Information concerning the product/service itself:

- Main characteristics of the comparative offer
- Price all costs included (including taxes, filing, cancellation and transportation costs)
- Warranties attached to the products/services

LEGAL REGIME IN FRANCE

➤ Information concerning the service of comparison

- Ahead of the ranking:
 - Non comprehensiveness of the available offers
 - Criteria of ranking
 - The principle of paying referencing (when applicable)
- For offers which referencing is paying and for which the remuneration influences the ranking, the site will have to mention its advertisement nature by the word “Announce”.

LEGAL REGIME IN FRANCE

- Detail of information to be mentioned in a specific rubric:
 - Different criteria of ranking available in terms understandable by the consumer
 - The existence if any, of a contractual relation between the site and the referenced professionals and of a remuneration if any
 - Detail of the mention “all costs included”
 - The possible variation of marketing warranties between the compared products/services
 - The non-comprehensiveness of the offers
 - The frequency and the update of the method of ranking

LEGAL REGIME IN FRANCE

- Territoriality: applicable to websites established in France and out of France and which main purpose is to offer comparison services dedicated to French consumers, whatever the location of the website.
- Information in French and easily readable

PAULHAN & ASSOCIÉS

Avocats à la Cour

PARIS

29 avenue d'Eylau
75116 PARIS
Palais L 196

LYON

119 rue Pierre Corneille
69003 LYON
Palais 2001

Tél. : 33 (0)1 53 70 05 55
Fax : 33 (0)1 53 70 05 59
legal@paulhan-avocat.com
www.paulhan-avocat.com