

The so-called European consumer model

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The legal problems caused by consumer models in marketing and market research

Is there such a thing as a European consumer? What influence do conditions across Europe have on people's rights on a national level? And what effect do people's expectations in individual countries have upon the whole of Europe? With community law in Europe, an innumerable number of new harmonisation problems have arisen because of the differences in laws from country to country. These problems reflect on national law and then cause new problems on a national level.

One of the most significant examples is the consumer model. The key question with consumer models is, under what circumstances from a legal point of view are consumers being misled. Every agency and every office of competition has to, or should, consider the issue carefully. Market researchers have to be familiar with these problems when they do advertising, or when they conduct surveys on misleading practices, on awareness, on common brand associations or other competition related issues.

The legal experts have yet to understand variety and its legal implications

Even in the most simple cases market researchers and social researchers know only too well that when it comes down to how advertising is understood, it can be seen one way by one set of people and another way by another, even without thinking about *the rest*. How the different interpretations are distributed can only really be ascertained to any degree of certainty with polling methods.

Some people see *Lübeck Marzipan* as a product from the German town of Lübeck. Others think it is a product descriptor. Still more think it is both. A fourth set of people thinks it is some sort of made-up name. And then of course there are those consumers who have no real opinion. Without taking a representative sample nobody knows what share each individual group has.

We meet this problem time and time again. People would probably decide the same way as *Lübeck Marzipan* with "You'll find no better beer", for instance. Is such advertising interpreted as meaning the beer is unique, or the best in its class? Or do consumers take the advertising literally? You'll find nothing better, but maybe also nothing worse? Or do people take the slogan on face value as some sort of jingle without any real content?

People have already been arguing at length about issues like this and the key question is: how consumers interpret. And what do the legal experts take into account?

- The French with their *bon père de famille*;
- The British with *the man on the street or the man on the Clapham Omnibus*;
- The Benelux legal experts with the *average buyer*;

- The Italian legal experts with *purchasers with average attention and intelligence*;
- The Greeks with *average consumers*;
- The Austrians with *average casual observers*;
- The Germans with *a not insignificant proportion of brief average consumers*.

Of course the way judges formulate their views varies widely. In the same way that there is variety in the extent to which legal aspects are sufficiently apace with sociological developments. With this broad variety of consumer interpretations, what is the relevance of saying that things should be measured according to the interpretation of the ordinary man? Each one sees it differently from the other.

The miracle

According to the courts of law, they know with enough certainty to provide full proof what the ordinary man and the average consumer et cetera thinks. But whenever 45 percent see it this way, 45 percent the other way and 10 percent express no opinion, the courts have not wondered who *the ordinary man* or *the average consumer* even is.

The European Court's consumer model

The EU Court has made a decision with which the State national courts are beginning to agree:

Standards are measured by "an average consumer who is reasonably well-informed and reasonably observant and circumspect". In other words an amalgamation of the laws from individual countries. Just like the national courts, the EU Court is assuming that any judge is in a fundamental position to interpret what such a consumer looks like without any support from a survey. So: Not a very clear situation as far as the sociological factors are concerned.

The implications for market researchers and advertisers

Anybody who knows anything about market research can see that this consumer model is not exactly the philosopher's stone. This year a legal study is expected to be completed, and an analysis will be published with a solution to the whole issue. The solution will be a matter of:

- Things being geared to how individual consumers really interpret things - in variety - and
- survey data being analysed to see whether this then means individual cases fulfil requirements for creating norms.