

Corporates may want to think twice before speaking to the press

Madrid, August 2022

National and international press have been reporting on the legal disputes between two leading Spanish listed companies (I and A) for some years now and a new ruling of this particular *saga* was issued recently¹.

Two days before the release of I's 2020 financial results, the widely read Spanish online newspaper *El Confidencial* published that A was preparing a claim for damages against I amounting to € 2.6 billion.

I then sued A on the grounds that the latter had leaked the press news with the sole purpose of damaging the reputation of the former in breach of the Spanish Unfair Competition Act (UCA). I requested the court to (i) declare that A had committed an unfair business practice forbidden under the UCA, (ii) order A to remove the news from *El Confidencial's* webpage and (iii) publish the judgment in said webpage.

A replied, *inter alia*, that it had not leaked the news and that, even assuming for the sake of argument that it had, revealing that information would not amount to a violation of the UCA for several reasons.

The judgment starts by reminding that the "freedom to impart information" is protected by the Spanish Constitution provided that the information is truthful. It also clarifies that "truthful" does not necessarily mean that the information must be completely accurate, but that the informer has verified the information with reasonable diligence and according to professional standards before making it public.

The court found that A had indeed informed *El Confidencial* of its intention to file the claim against I (or, at least, had confirmed that the information was correct) and, hence, the journalist had acted within the bounds of his freedom of information. It reached this conclusion, *inter alia*, considering the statements made by the journalist and A's communications manager at the hearing, the lack of any official statement from A denying the news and the fact that the newspaper provided specific information about the claim that could have only come from A.

The court also found that A's behaviour was exclusively aimed at undermining I's reputation in the market and was objectively suitable for that purpose, given the magnitude of I's alleged potential liability (72 per cent of its net income). The court highlighted that the news was published right before the presentation of I's results and had a great impact both in Spain and abroad, to the extent that I's share price immediately dropped, and I received a letter from an American law firm announcing civil claims in the US against it that could amount to some € 7.8 billion.

Interestingly enough, the court declared that the news was not true because "A never had the intention to bring a claim against I" but noted that, in any event, publishing true and accurate news could also entail a violation of the UCA if these are not relevant.

For these reasons the court upheld I's claim. As far as we know, no information has been disclosed about whether the judgment has been challenged.

A lesson than can be drawn from this judicial case is that corporations should be very cautious when speaking to the press about court disputes, as the consequences can be serious economically and reputationally.

¹ Judgment No. 582/2022 of the commercial court No. 4 of Madrid dated 19 April 2022 (JUR/2022/134184).