

Directive 2006/114/EC of the European Parliament and of the Council
of 12 December 2006 concerning misleading and comparative
advertising (codified version) (Text with EEA relevance)

Article 5

1 Member States shall ensure that adequate and effective means exist to combat misleading advertising and enforce compliance with the provisions on comparative advertising in the interests of traders and competitors.

Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating misleading advertising or regulating comparative advertising may:

- a take legal action against such advertising;
- or
- b bring such advertising before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.

2 It shall be for each Member State to decide which of the facilities referred to in the second subparagraph of paragraph 1 shall be available and whether to enable the courts or administrative authorities to require prior recourse to other established means of dealing with complaints, including those referred to in Article 6.

It shall be for each Member State to decide:

- a whether these legal facilities may be directed separately or jointly against a number of traders from the same economic sector;
- and
- b whether these legal facilities may be directed against a code owner where the relevant code promotes non-compliance with legal requirements.

3 Under the provisions referred to in paragraphs 1 and 2, Member States shall confer upon the courts or administrative authorities powers enabling them, in cases where they deem such measures to be necessary taking into account all the interests involved and in particular the public interest:

- a to order the cessation of, or to institute appropriate legal proceedings for an order for the cessation of, misleading advertising or unlawful comparative advertising;
- or
- b if the misleading advertising or unlawful comparative advertising has not yet been published but publication is imminent, to order the prohibition of, or to institute appropriate legal proceedings for an order for the prohibition of, such publication.

The first subparagraph shall apply even where there is no proof of actual loss or damage or of intention or negligence on the part of the advertiser.

Member States shall make provision for the measures referred to in the first subparagraph to be taken under an accelerated procedure either with interim effect or with definitive effect, at the Member States' discretion.

4 Member States may confer upon the courts or administrative authorities powers enabling them, with a view to eliminating the continuing effects of misleading advertising or unlawful comparative advertising, the cessation of which has been ordered by a final decision:

- a to require publication of that decision in full or in part and in such form as they deem adequate;

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b to require in addition the publication of a corrective statement.

5 The administrative authorities referred to in point (b) of the second subparagraph of paragraph 1 must:

- a be composed so as not to cast doubt on their impartiality;
- b have adequate powers, where they decide on complaints, to monitor and enforce the observance of their decisions effectively;
- c normally give reasons for their decisions.

6 Where the powers referred to in paragraphs 3 and 4 are exercised exclusively by an administrative authority, reasons for its decisions shall always be given. In this case, provision must be made for procedures whereby improper or unreasonable exercise of its powers by the administrative authority or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.