

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)

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PARLIAMENT AND OF THE COUNCIL

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concerning misleading and comparative advertising

(codified version)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising⁽³⁾ has been substantially amended several times⁽⁴⁾. In the interests of clarity and rationality the said Directive should be codified.
- (2) The laws against misleading advertising in force in the Member States differ widely. Since advertising reaches beyond the frontiers of individual Member States, it has a direct effect on the smooth functioning of the internal market.
- (3) Misleading and unlawful comparative advertising can lead to distortion of competition within the internal market.
- (4) Advertising, whether or not it induces a contract, affects the economic welfare of consumers and traders.
- (5) The differences between the laws of the Member States on advertising which misleads business hinder the execution of advertising campaigns beyond national boundaries and thus affect the free circulation of goods and provision of services.
- (6) The completion of the internal market means a wide range of choice. Given that consumers and traders can and must make the best possible use of the internal market, and that advertising is a very important means of creating genuine outlets for all goods and services throughout the Community, the basic provisions governing the form and content of comparative advertising should be uniform and the conditions of the use of comparative advertising in the Member States should be harmonised. If these

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conditions are met, this will help demonstrate objectively the merits of the various comparable products. Comparative advertising can also stimulate competition between suppliers of goods and services to the consumer's advantage.

- (7) Minimum and objective criteria for determining whether advertising is misleading should be established.
- (8) Comparative advertising, when it compares material, relevant, verifiable and representative features and is not misleading, may be a legitimate means of informing consumers of their advantage. It is desirable to provide a broad concept of comparative advertising to cover all modes of comparative advertising.
- (9) Conditions of permitted comparative advertising, as far as the comparison is concerned, should be established in order to determine which practices relating to comparative advertising may distort competition, be detrimental to competitors and have an adverse effect on consumer choice. Such conditions of permitted advertising should include criteria of objective comparison of the features of goods and services.
- (10) The international conventions on copyright as well as the national provisions on contractual and non-contractual liability should apply when the results of comparative tests carried out by third parties are referred to or reproduced in comparative advertising.
- (11) The conditions of comparative advertising should be cumulative and respected in their entirety. In accordance with the Treaty, the choice of forms and methods for the implementation of these conditions should be left to the Member States, insofar as those forms and methods are not already determined by this Directive.
- (12) These conditions should include, in particular, consideration of the provisions resulting from Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽⁵⁾, and in particular Article 13 thereof, and of the other Community provisions adopted in the agricultural sphere.
- (13) Article 5 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks⁽⁶⁾ confers exclusive rights on the proprietor of a registered trade mark, including the right to prevent all third parties from using, in the course of trade, any sign which is identical to, or similar to, the trade mark in relation to identical goods or services or even, where appropriate, other goods.
- (14) It may, however, be indispensable, in order to make comparative advertising effective, to identify the goods or services of a competitor, making reference to a trade mark or trade name of which the latter is the proprietor.
- (15) Such use of another's trade mark, trade name or other distinguishing marks does not breach this exclusive right in cases where it complies with the conditions laid down by this Directive, the intended target being solely to distinguish between them and thus to highlight differences objectively.
- (16) Persons or organisations regarded under national law as having a legitimate interest in the matter should have facilities for initiating proceedings against misleading and unlawful comparative advertising, either before a court or before an administrative

authority which is competent to decide upon complaints or to initiate appropriate legal proceedings.

- (17) The courts or administrative authorities should have powers enabling them to order or obtain the cessation of misleading and unlawful comparative advertising. In certain cases it may be desirable to prohibit misleading and unlawful comparative advertising even before it is published. However, this in no way implies that Member States are under an obligation to introduce rules requiring the systematic prior vetting of advertising.
- (18) The voluntary control exercised by self-regulatory bodies to eliminate misleading or unlawful comparative advertising may avoid recourse to administrative or judicial action and ought therefore to be encouraged.
- (19) While it is for national law to determine the burden of proof, it is appropriate to enable courts and administrative authorities to require traders to produce evidence as to the accuracy of factual claims they have made.
- (20) Regulating comparative advertising is necessary for the smooth functioning of the internal market. Action at Community level is therefore required. The adoption of a Directive is the appropriate instrument because it lays down uniform general principles while allowing the Member States to choose the form and appropriate method by which to attain these objectives. It is in accordance with the principle of subsidiarity.
- (21) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives as set out in Part B of Annex I,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) Opinion of 26 October 2006 (not yet published in the Official Journal).
- (2) Opinion of the European Parliament of 12 October 2006 (not yet published in the Official Journal) and Council Decision of 30 November 2006.
- (3) [OJ L 250, 19.9.1984, p. 17](#). Directive as last amended by Directive 2005/29/EC of the European Parliament and of the Council ([OJ L 149, 11.6.2005, p. 22](#)).
- (4) See Annex I, Part A.
- (5) [OJ L 93, 31.3.2006, p. 12](#).
- (6) [OJ L 40, 11.2.1989, p. 1](#). Directive as amended by Decision 92/10/EEC ([OJ L 6, 11.1.1992, p. 35](#)).