

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance)

## CHAPTER 4

### FINAL PROVISIONS

#### *Article 14*

#### **Amendments to Directive 84/450/EEC**

Directive 84/450/EEC is hereby amended as follows:

1. Article 1 shall be replaced by the following:

#### *Article 1*

The purpose of this Directive is to protect traders against misleading advertising and the unfair consequences thereof and to lay down the conditions under which comparative advertising is permitted.;

2. in Article 2:

— point 3 shall be replaced by the following:

3. "trader" means any natural or legal person who is acting for purposes relating to his trade, craft, business or profession and any one acting in the name of or on behalf of a trader.;

— the following point shall be added:

4. "code owner" means any entity, including a trader or group of traders, which is responsible for the formulation and revision of a code of conduct and/or for monitoring compliance with the code by those who have undertaken to be bound by it.;

3. Article 3a shall be replaced by the following:

#### *Article 3a*

1. Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- (a) it is not misleading within the meaning of Articles 2(2), 3 and 7(1) of this Directive or Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market<sup>(1)</sup>;

- (b) it compares goods or services meeting the same needs or intended for the same purpose;

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- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- (d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- (e) for products with designation of origin, it relates in each case to products with the same designation;
- (f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;
- (h) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.;

4. Article 4(1) shall be replaced by the following:

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

It shall be for each Member State to decide which of these facilities 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 5.

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.;

5. Article 7(1) shall be replaced by the following:
  1. This Directive shall not preclude Member States from retaining or adopting provisions with a view to ensuring more extensive protection, with regard to misleading advertising, for traders and competitors.

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(1) [OJ L 149, 11.6.2005, p. 22.](#);