

Screening Croatia and Turkey « Misleading and Comparative Advertising »

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**DIRECTIVE 84/450/EEC
OF 10 SEPTEMBER 1984**

**RELATING TO THE APPROXIMATION
OF LAWS, REGULATIONS AND ADMINISTRATIVE
PROVISIONS OF THE MEMBER STATES
CONCERNING**

MISLEADING ADVERTISING

As amended by Directive 97/55 so as to include

COMPARATIVE ADVERTISING

OBJECTIVE

- **to protect :**

(a) consumers,

(b) persons (*natural or legal*) carrying on a trade, business or practising a craft or profession,

(c) the interests of the public in general

against misleading advertising and the unfair consequences thereof, and

- **to lay down the conditions under which comparative advertising is permitted.**

WHAT IS ADVERTISING ?

The making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations.

WHAT IS MISLEADING ADVERTISING ?

Any advertising which in any way, including its presentation,

- (a) deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and
- (b) which, by reason of its deceptive nature, is likely to affect their economic behaviour, or
- (c) which, for those reasons, injures or is likely to injure a competitor.

WHICH FEATURES SHOULD BE TAKEN INTO ACCOUNT IN DETERMINING WHEN ADVERTISING IS MISLEADING ?

(Article 3)

All of them, and in particular any information concerning:

(a) the characteristics of goods and services,

such as : availability, quantity, nature, specification, execution, geographical or commercial origin, composition, uses, method and date of manufacture or provision, the results to be expected from their use, etc

(b) the price or the manner in which the price is calculated,

(c) the nature, attributes and rights of the advertiser (identity and assets, qualifications, ownership of industrial, commercial or intellectual property rights, awards and distinctions.)

WHAT IS COMPARATIVE ADVERTISING ?

Any advertising which:

A) Identifies a competitor,

B) Identifies a goods or services offered by a competitor

- explicitly (*naming him*)

or

- by implication (*without naming him*)

HOW TO CONTROL MISLEADING

ADVERTISING (1)

Compulsory control

- **Member States shall ensure that adequate and effective means of control exist.**
- **persons or organisations having a legitimate interest in prohibiting misleading advertising, may:**
 - **take legal action, and/or**
 - **go before an administrative authority**
(is up to the Member States to decide)
- **The legal provisions should confer upon the courts or administrative authorities powers enough to:**
 - **order the cessation of misleading advertising, *(with interim effects or with definitive effects, under an accelerated procedure)***
 - or**
 - **order the prohibition *(if misleading advertising has not yet been published but publication is imminent)***

HOW TO CONTROL MISLEADING ADVERTISING (2)

- **Voluntary control**
- **The directive does not exclude systems of voluntary control by self-regulatory bodies.**
- **Member States may encourage this kind of control.**

COMPARATIVE ADVERTISING IS PERMITTED WHEN (1)

- (a) it is not misleading, and**
- (b) it compares goods or services meeting the same needs or intended for the same purpose,
and**
- (c) it objectively compares one or more material, relevant, verifiable, and representative features of those goods and services, which may include price, and**

COMPARATIVE ADVERTISING

IS PERMITTED WHEN (2)

- d) it does not create confusion in the market place between the advertiser and a competitor, including its trade marks, and**
- (e) it does not discredit or denigrate a competitor, and**
- (f) compares products with the same designation of origin (*appellation d'origine contrôlée*), and**
- (g) it does not take unfair advantage of the reputation of the trade mark of a competitor, and**
- (h) it does not present goods or services as imitations or replicas of goods or services protected by a trade mark.**

REVERSAL OF BURDEN OF PROOF

An advertiser should be able to justify the validity of any claims he makes,

THEREFORE

**The advertiser -not the consumer-
should furnish evidence as to the accuracy
of factual claims**