

Misleading advertising and comparative advertising (amend. Directive 84/450/EEC)

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The directive on comparative advertising, first proposed by the Commission in May 1991, was agreed by the joint Parliament/Council Conciliation Committee. The final compromise text incorporates much of the substance of Parliament's amendments aimed at protecting the consumer and business competitors against misleading comparative advertising. Comparative advertising, colloquially known as "knocking copy", is advertising in which a vendor sets the supposedly superior merits of his own product or service against the allegedly lesser quality of rival products or services - often on the basis of comparative tests. The directive brings comparative advertising within the scope of directive 84/450/EEC on misleading advertising. The Committee on the Environment, Public Health and Consumer Protection, chaired by Mr Ken COLLINS (PES, UK), was the committee responsible and Parliament's rapporteur was Mrs Ria OOMEN-RUIJTEN (EPP, NL). In an acknowledgement that unscrupulous competitors should not be allowed to take a free ride on the backs of existing businesses with established reputations, Council accepted a parliamentary amendment banning comparative advertising of goods or services which are imitations or replicas of other goods or services with a protected trade mark or trade name. Parliament also persuaded Council to agree that comparative advertising must not discredit the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor. In a compromise provision on tests, whose authors usually have copyright over them, the Conciliation Committee agreed that the international conventions on copyright apply when comparative advertising refers to the results of comparative tests carried out by third parties. Moreover, at Parliament's insistence, advertisers may be required to provide evidence, within a short time, establishing the accuracy of factual claims made in comparative advertising. Parliament was also successful in getting Council to agree that Member States could maintain or introduce bans or limitations on the use of comparisons in the advertising of professional services. This will enable comparative advertising to be prohibited where it is against the codes of practice of professional bodies such as lawyers' organizations. According to another provision agreed after pressure from Parliament, the directive does not exclude the voluntary control of misleading or comparative advertising by self-regulatory bodies and such control may be encouraged by Member States. Furthermore, "national self-regulatory bodies may coordinate their work through associations or organizations established at Community level and, inter alia, deal with cross-border complaints". In addition, the Commission is to study the feasibility of establishing effective means to deal with such complaints. The Conciliation Committee was co-chaired by Mrs Nicole FONTAINE, an EP vice-president, and Ms Anneke VAN DOK-VAN WEELE, Netherlands State Secretary for Economic Affairs. As the final stage in the legislative procedure, the text agreed by the Conciliation Committee must now be adopted by the Council (by a qualified majority) and Parliament (by a simple majority). Member States have 30 months in which to implement the directive following its publication in the Official Journal.