[IT] Comparative Advertising Allowed by the Self-regulatory Advertising Code

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At the end of 1998 the Italian Committee of Advertising Practice approved the 27th edition of the Code of Advertising and Sales Promotion, which partly entered into force on 29 November 1998.

Articles 13 and 15 of the Code, concerning comparative advertising, became effective only on 18 May 1999. The Code applies to advertising disseminated on all kinds of media, and thus also to television broadcasting. Article 13 provides that any advertising that copies or imitates must be avoided even if it relates to non-competitive products, particularly if it is likely to create confusion with other advertising. In addition, any exploitation of the name, trademark, notoriety and the image of others must be avoided, if intended to obtain an undue advantage. Article 15 states that comparison is allowed if it seeks to illustrate technical or economic advantages and characteristics of goods and services, objectively compares relevant, verifiable and representative features of those goods and services, which meet the same needs or intended for the same purposes. Comparison should be fair and not misleading, and should not create confusion, nor discredit or denigrate other products or services. It should not take unjustified advantage of the notoriety of others.

The latter provision represents a first self-regulatory implementation of EC Directive 97/55, amending Directive 84/450/EEC concerning misleading and comparative advertising, and allows for the first time direct comparative advertising in Italy.

The Misleading Advertising Decree (Attuazione della Direttiva 84/450/CEE in materia di pubblicità ingannevole of 25 January 1992 , no. 74, in Gazzetta Ufficiale 1992, 36) did not deal with comparative advertising, and the previous editions of the Advertising Code allowed only indirect comparison. Pursuant to article 1, paragraph 1, and Annex A of the Community Act - 1998 (Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee - legge comunitaria 1998 , of 5 February 1999, no. 25, in Gazzetta Ufficiale 1999, 35), the Government will soon adopt a specific decree in order to implement EC Directive 97/55.

Codice dell'Autodisciplina Pubblicitaria.

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Code of Advertising and Sales Promotion, 27 edition.

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