[DE] Amendment to Law on Comparative Advertising Passed

IRIS 2000-7:1/24

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On 9 June 2000 the Bundestag (Federal Parliament) amended parts of the Gesetz gegen den unlauteren Wettbewerb (Unfair Competition Act - UWG) in order to standardise what is known as comparative advertising. Previously such advertising was not expressly regulated in Germany. In most cases, the courts used to classify comparative advertising as anti-competitive.

The amendment transposes European Parliament and Council Directive 97/55/EC of 6 October 1997 into German law. The Directive itself contains individual conditions that must be fulfilled if comparative advertising is to be considered legal. According to the new standards, which include the requirements set out in the Directive, comparisons may only be drawn between goods that meet the same need or fulfil the same purpose. Furthermore, only essential, objectively verifiable features or the price of goods may be compared, while the comparison must be made without disparagement. There must also be no risk of confusion between different products. Comparative advertising of pharmaceutical products is prohibited, except in specialist circles.

The Bundesgerichtshof (Federal Supreme Court) had already decided in 1998 that comparative advertising should be allowed if the Directive's requirements were met (see IRIS 1998-7: 6). Apart from liberalising competition law, the main aim of the amendment is to create legal clarity and certainty.

Bundestag Plenary report 14/109 of 9 June 2000 concerning a resolution. Bundestag circular 14/3818 of 19 May 2000 concerning a recommendation for a resolution.

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