[NL] Transposition of EC Directive on Comparative Advertising

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By means of an amendment to the Burgerlijk Wetboek (Civil Code), Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising was transposed into Dutch law.

The Directive states that comparative advertising is, in principle, admissible in the European Community, provided a number of carefully defined criteria are met.

In order to transpose the Directive, an new Article 194a was added to the Dutch Civil Code, defining comparative advertising and explaining under what conditions - in accordance with the Directive's provisions - it is allowed. For example, comparative advertising may not be misleading and any comparison must be made on the basis of objective, comprehensible criteria and specific features of the compared goods or services. It may not harm a competitor's reputation or discredit its products or services. Furthermore, products must not be shown if they are imitations of other products bearing a protected trade mark. Article 194a concludes with specific regulations on special offers.

At the same time, the Stichting Reclamecode (a self-regulatory body including advertisers as well as media and consumer representatives) announced that the Reclamecode (advertising guidelines) would also be brought into line with the Directive's provisions. Self-regulation plays a vital role in advertising in the Netherlands.

Article 195 of the Dutch Civil Code, which has also been amended, contains a change in the burden of proof in favour of anyone who relies on the aforementioned provisions in legal proceedings. From now on, the advertiser carries the burden of proof for the legitimacy of comparative as well as misleading advertising.

Aanpassing van Boek 6 van het Burgerlijk Wetboek aan richtlijn (EG) nr. 97/55 van het Europees Parlement en de Raad van 6 october 1997 tot wijziging van richtlijn nr.84/450/EEG inzake misleidende reclame ten einde ook vergelijkende reclame te regelen (PbEG L 290); Voorstel van wet, Kamerstuk 2000-2001, 27619, nr. 1-2, Tweede Kamer, 22 February

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Amendment of the 6th volume of the Civil Code in line with Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, Voorstel van wet, Kamerstuk 2000-2001, 27619, nr. 1-2, Tweede Kamer, 22 February 2001

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