[FR] Transposition of Directive 97/55/EC on Comparative Advertising

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Seven Community Directives on consumer protection have now been transposed into French national law. The first section of the transposing order is devoted to comparative advertising, amending Articles L. 121-8 to L. 121-12 of the Consumer Code in order to take account of the provisions of Directive 97/55/EC of 6 October 1997. The rules governing comparative advertising have been relaxed; this is now defined as "any advertising that compares goods or services by identifying, implicitly or explicitly, a competitor or goods or services offered by a competitor". As previously, such advertising must not be misleading and must be objective. The characteristic(s) compared must be essential, relevant, real and representative.

Comparison will now be permitted as long as it refers to goods or services that "respond to the same needs or have the same objective" rather than merely "of the same kind". Price comparisons will no longer be restricted to goods or services that are "identical and sold under the same conditions", which means that comparisons can be made among products that are not strictly identical. In the context of a special offer using comparative advertising, the advertiser will have to fulfil special obligations in providing information (duration of the offer, availability of the goods or services, etc). As Article L. 121-9 of the Consumer Code has been amended, there should be no confusion in the market between the advertiser and a competitor, nor result in the discredit or denigration of brands. Lastly, there is no longer any obligation to communicate the campaign to the competitor involved in advance.

Ordonnance du 23 août 2001 portant transposition de directives communautaires et adaptation au droit communautaire en matière de droit de la consommation, JO 25 juillet 2001

Order of 23 August 2001 transposing Community Directives and adapting legislation to Community law on consumer matters, Journal Officiel of 25 July 2001

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