European Commission: Opinion on the amendments by the European Parliament to the Council's common position on the inclusion of comparative advertising in the Directive on misleading advertising

IRIS 1997-1:1/13

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In IRIS 1996-10: 10, we reported on both the common position adopted by the EU Council on 19 March 1996on amending Directive 84/450/EEC on misleading advertising, so as to include comparative advertising, and on the Decision by the European Parliament of 23 October 1996 to amend certain elements of this common position. On 13 December 1996, the European Commission published its Opinion on the amendments introduced by the European Parliament. The Commission indicates that 8 of the amendments would be acceptable but rejects 8 other amendments.

Two of the rejected amendments concern the insertion by the European Parliament of provisions relating to the use of comparative tests in comparative advertising. Such provisions also appeared in the initial proposal, but later it was decided that they were not strictly necessary in order to achieve the proposal's objectives. Therefore they were deemed to be incompatible with the principle of proportionality and taken out.

The Commission regards the proposed creation of a European self-regulatory umbrella body as unacceptable because of the potential financial implications for the Community budget.

The amendment obliging the advertiser who uses comparative material in advertising to justify and substantiate the comparison within 48 hours after olacing the advertisement, as well as the amendment concerning the use of registered trade marks in comparative advertising, are regarded by the Commission as excessive and unreasonable. The Commission deems that the amendment which allows Member States to require prior recourse to other established means of dealing with complaints including self-regulatory procedures, is likely to prevent or to cause delay to consumer access to ordinary justice. Therefore, according to the Commission, this amendment may be incompatible with Article 6 of the European Convention for the protection of human rights and fundamental freedoms.

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Opinion of the Commission pursuant to Article 189 b (2) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a European Parliament and Council Directive ameding Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising, amending the Proposal of the Commission pursuant to Article 189 a (2) of the EC Treaty, 13 December 1996 COM(96) 700 final - COD 343.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1996:0700:FIN:EN:PDF

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