

**Barker  
Brettell**

Intellectual  
Property

TRADE MARKS



# Comparative advertising

Comparative advertising is an advertisement for a particular product or service which specifically mentions a competitor by name. Its express purpose is to show why the advertiser's goods/services are a better choice. It can, if used correctly, be a legitimate means of informing consumers why it is in their interest to purchase your goods or services as opposed to those of your competitors.

## How does it work?

The Comparative Advertising Directive (CAD) sets out a series of conditions that a comparative advert must meet if the advert is to be permissible.

## Conditions

The advert:

- Must not be misleading.
- Should not create confusion in the marketplace between the two competitors or their goods, services, or trade marks.
- Should not discredit or denigrate the goods, services or trade marks of the competitor.
- Should not take unfair advantage of the reputation of the competitor's trade mark.
- Should only relate to goods or services which meet the same needs or are intended for the same purpose.
- Should only relate to products with the same designation of origin.
- Should deal objectively with material, relevant, verifiable and representative features of those goods or services being compared, which may include price.

## Examples of comparative advertising



Who loves flying you to the place you actually booked?

Airline	Route
Ryanair	"Barcelona" = Girona
Ryanair	"Paris" = Beauvais
Ryanair	"Milan" = Bergamo
Ryanair	"Venice" = Treviso
easyJet	Barcelona = Barcelona
easyJet	Paris = Paris
easyJet	Milan = Milan
easyJet	Venice = Venice

Get on board the love plane now!

### **Why should the client be concerned?**

If your client's advertising does not comply with the requirements of CAD, they could be held liable for UK or EU trade mark infringement which could result in paying financial remedies to the named competitor. Therefore, if your client wants to use a comparative advert, it must fall within the provisions of CAD.

The provisions can vary in the different EU member states and we highly recommend seeking local advice for any comparative advertising campaign with which your client is involved.