



Comparative advertising

What is it?

Comparative advertising is an advertisement for a particular good or service which specifically mentions a competitor by name for the express purpose of showing why the advertiser's goods/services are a better choice. It can be a legitimate means of informing consumers of 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; and
- Should deal objectively with the material, relevant, verifiable and representative features of those goods or services being compared, which may include price.

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Examples of comparative advertising:



Why should I be concerned?

If your advertising does not comply with the requirements of CAD, you could be held liable for trade mark infringement which could result in you having to pay financial remedies to your competitor. Therefore, if you want to use a comparative advert, you need to make sure you get it right and that you fall within the provisions of CAD.

Why use Barker Brettell?

Our attorneys have experience of advising how to ensure that you can successfully run a comparative advertising campaign which does not infringe the CAD requirements and will not leave you vulnerable to trade mark infringement proceedings.

We can advise you more on these issues, as well as on any of the other aspects of intellectual property as Barker Brettell offers a full range of intellectual property services and we are always happy to take the time to tailor our services to your needs.

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