

**Act**  
**on Comparative Advertising and**  
**to Amend Provisions of Competition Law\*)**

of 1 September 2000

The Federal Parliament has passed the following Act:

**Article 1**  
**Amendment to the Act Against Unfair Competition**

The Act Against Unfair Competition in the published revised version in the Federal Law Gazette, Part III, Category Number 43-1, as last amended by Article 4 of the Act of 27 June 2000 (Federal Law Gazette I p. 897), shall be amended as follows:

1. Section 2 shall be replaced by the following provision:

"Section 2

(1) Comparative advertising shall be any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

(2) Comparative advertising shall constitute a breach of honest practice within the meaning of Section 1 where the comparison

1. does not relate to goods or services meeting the same needs or intended for the same purpose;
2. does not relate objectively to one or more material, relevant, verifiable and representative features of those goods and services or to their price;

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\*) This Act serves to implement 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 (OJ L 290 p. 18 of 29 October 1997), as well as Article 5 (b) of Directive 92/28/EEC of the Council of 31 March 1992 on the advertising of medicinal products for human use (OJ L 113 p. 13 of 30 April 1992).

3. creates confusion in the market place between the advertiser and a competitor or between the goods or services they offer or their trade marks, trade names or other distinguishing marks;
4. unfairly takes advantage of, or unfairly harms, the reputation of a trade mark, trade name or other distinguishing marks of a competitor;
5. discredits or denigrates the goods, services, activities, or personal or business circumstances of a competitor; or
6. presents goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

(3) If the comparison refers to an offer at a special price or other special conditions, clear indication shall be given of the date on which the offer ends and, where this does not yet apply, the date on which the offer begins. If the offer applies only so long as the goods or services are available, this shall be clearly indicated.

2. The following sentence shall be added to section 3:

“Statements concerning business circumstances within the meaning of the first sentence shall also be deemed to be statements in the context of comparative advertising.”

3. The following sentence shall be inserted after section 4 (1), first sentence:

“Statements concerning business circumstances within the meaning of the first sentence shall also be deemed to be statements in the context of comparative advertising.”

4. Section 6c shall be worded as follows:

“Section 6c

Whoever in the course of business activity undertakes by himself or through others to induce non-merchants to purchase goods, commercial services or rights by promising that they would acquire special advantages either from the inducer himself or from a third person in the event of their inducing other persons to conclude such transactions, being persons who, according to this type of

advertising, are in turn to acquire such advantages for similarly soliciting further purchasers, shall be liable to imprisonment of up to two years or a fine.”

5. In section 24 (2), first sentence, the words “no place of residence” shall be replaced by the words “neither a business establishment nor a place of residence”.

## **Article 2**

### **Amendment to the Act on Advertising in the Field of Healthcare**

The following subsection (2) shall be inserted after section 11 of the Act on Advertising in the Field of Healthcare in the version published on 19 October 1994 (Federal Law Gazette I p. 3066), as last amended by Article 2 section 14 of the Act of 20 July 2000 (Federal Law Gazette I p. 1045):

“(2) Outside expert circles there shall be no advertising of medicinal products for human use suggesting that the effect of the medicinal product is equivalent to, or better than, that of another medicinal product or another treatment.”

## **Article 3**

### **Amendment to the Copyright Act**

In part II no. 1 of the Annex to section 54d subsection 1 of the Copyright Act of 9 September 1965 (Federal Law Gazette I p. 1273), as last amended by Article 12 of the Act of 16 July 1998 (Federal law Gazette I p. 1827) the words “from 2” following the words “with a capacity of” shall be replaced by the word “up”.<sup>1</sup>

## **Article 4**

### **Entry into Force**

This Act shall enter into force on the day following its promulgation.

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<sup>1</sup> Translator's note: The last line of the English translation of the text of Article 3 does not constitute a rendering of every German word used; here the chosen rendering reflects the need to adjust this translation to an existing English translation of the Act referred to in this Article, i.e. the German Copyright Act.

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The constitutional rights of the Federal Council have been heeded.  
The above Act is hereby executed and promulgated in the Federal Law Gazette.

Berlin, 1 September 2000

The Federal President  
Johannes Rau

The Federal Chancellor  
Gerhard Schröder

The Federal Minister of Justice  
Däubler-Gmelin

The Federal Minister for Health  
Andrea Fischer

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