

**2000 No. 914**

**CONSUMER PROTECTION**

**The Control of Misleading Advertisements (Amendment)  
Regulations 2000**

|                               |                        |
|-------------------------------|------------------------|
| <i>Made - - - -</i>           | <i>30th March 2000</i> |
| <i>Laid before Parliament</i> | <i>31st March 2000</i> |
| <i>Coming into force</i>      | <i>23rd April 2000</i> |

Whereas the Secretary of State is a Minister designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to measures relating to the control of advertising:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 2 of that Act, hereby makes the following Regulations:—

**Citation and Commencement**

1. These Regulations may be cited as the Control of Misleading Advertisements (Amendment) Regulations 2000 and shall come into force on 23rd April 2000.

2. The Control of Misleading Advertisements Regulations 1988<sup>(c)</sup> (hereinafter called “the principal Regulations”) shall have effect subject to the amendments set out in regulations 3 to 12.

**Interpretation**

3.—(1) Regulation 2(1) shall be amended by the insertion before the definition of “publication” of the following:—

““products with designation of origin” are those products to which Council Regulation (EEC) No. 2081/92 of 14 July 1992 applies;”.

(2) After regulation 2(2) of the principal Regulations, there shall be inserted the following:—

“(2A) For the purposes of these Regulations an advertisement is comparative if in any way, either explicitly or by implication, it identifies a competitor or goods or services offered by a competitor.”

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<sup>(a)</sup> S.I. 1985/749.

<sup>(b)</sup> 1972 c. 68.

<sup>(c)</sup> S.I. 1988/915 as amended by section 203 and Schedule 20 paragraph 51 and Schedule 21 of the Broadcasting Act 1990 (c. 42), S.I. 1992/3218, S.I. 1995/1537 and S.I. 1995/3275.

(3) For references in the principal Regulations to “interlocutory injunction” there shall be substituted “interim injunction”.

### **Complaints to the Director**

4. Regulation 4(1) of the principal Regulations shall be amended by the insertion of “, or is a comparative advertisement and is not permitted under regulation 4A below” after “is misleading”.

### **Comparative Advertisements**

5. There shall be inserted after regulation 4 of the principal Regulations:—

#### **“Comparative Advertisements**

4A—(1) A comparative advertisement shall, as far as the comparison is concerned, be permitted only when the following conditions are met:—

- (a) it is not misleading;
- (b) it compares goods or services meeting the same needs or intended for the same purpose;
- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- (d) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser’s trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;
- (e) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of a competitor;
- (f) for products with designation of origin, it relates in each case to products with the same designation;
- (g) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- (h) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

(2) In the case of a comparative advertisement referring to a special offer, such an advertisement is not permitted unless it indicates in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods and services, and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions shall apply.

(3) The provisions of this regulation shall not be construed as—

- (a) conferring a right of action in any civil proceedings in respect of any contravention of this regulation (save as provided for in these Regulations); or
- (b) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of these Regulations.”

### **Applications to the Court by the Director**

6. Regulation 5(1) of the principal Regulations shall be amended by the insertion of “or is a comparative advertisement and is not permitted under regulation 4A” after “is misleading”.

## **Functions of the Court**

7. Regulation 6 of the principal Regulations shall be amended as follows:—
- (a) in paragraph (1) by the insertion of “or is a comparative advertisement and is not permitted under regulation 4A” after “misleading”;
  - (b) in subparagraph (5)(b) by replacing the final full-stop with “; or”;
  - (c) by the insertion after subparagraph (5)(b) of the following:—
    - “(c) the person responsible for the comparative advertisement intended to breach the conditions in regulation 4A(1) and (2) or failed to exercise proper care to meet the conditions in regulation 4A(1) and (2).”.

## **Powers of the Director to obtain and disclose information and disclosure of information generally**

8. Regulation 7(5) of the principal Regulations shall be amended by the insertion of “or comparative advertisements which do not comply with regulation 4A” after “misleading advertisements”.

## **Complaints to the Commission and The Radio Authority**

9. Regulation 8(1) of the principal Regulations shall be amended by the insertion of “or is a comparative advertisement and is not permitted under regulation 4A” after “is misleading”.

## **Control by the Commission and the Radio Authority of misleading advertisements**

10. Regulation 9 of the principal Regulations shall be amended by:—
- (a) the substitution of the cross-heading with “Control by the Commission and the Radio Authority of misleading advertisements and comparative advertisements”;
  - (b) in paragraph (1) the insertion of “or is a comparative advertisement and is not permitted under regulation 4A,” after “is misleading,”;
  - (c) in paragraph (2) the insertion of “, or may be a comparative advertisement which is not permitted under regulation 4A,” after “may be misleading”;
  - (d) in paragraph (3) the insertion of “within a time specified by the relevant body” after “paragraph (2) above”.

## **Complaints to the Welsh Authority**

11. Regulation 10(1) of the principal Regulations shall be amended by the insertion of “or is a comparative advertisement and is not permitted under regulation 4A,” after “is misleading”.

## **Control by the Welsh Authority of misleading advertisements**

12. Regulation 11 of the principal Regulations shall be amended by:—
- (a) the substitution of the cross-heading with “Control by the Welsh Authority of misleading advertisements and comparative advertisements”;
  - (b) in paragraph (1) the insertion of “or is a comparative advertisement and is not permitted under regulation 4A,” after “is misleading,”;
  - (c) in paragraph (2) the insertion of “, or may be a comparative advertisement which is not permitted under regulation 4A,” after “may be misleading”;
  - (d) the insertion in paragraph (3) of “within a time specified by the Welsh Authority” after “paragraph (2) above”.

*Kim Howells,*  
Parliamentary Under Secretary of State for  
Consumers and Corporate Affairs,  
Department of Trade and Industry

30th March 2000

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Council Directive No. 97/55/EC (OJ No. L290, 23.10.97 p. 18) which amends Directive 84/450/EEC (OJ No. L250, 19.9.1985 p. 17) concerning misleading advertising so as to include comparative advertising. These Regulations amend the Control of Misleading Advertisements Regulations 1988 (S.I. 1988/915) (“the principal Regulations”) by adding provisions dealing with “comparative advertisements” to the regime governing “misleading advertisements” set out in the principal Regulations.

A “comparative advertisement” is defined as being an advertisement which either implicitly or explicitly identifies a competitor or goods or services offered by a competitor (regulation 3(4)). A comparative advertisement is permitted only when the conditions set out in regulation 4A are met.

The provisions of the principal Regulations which require the Director General of Fair Trading to consider complaints (other than frivolous or vexatious ones) about misleading advertisements are extended to apply to complaints concerning comparative advertisements. Similarly the provisions empowering the Director to bring proceedings for an injunction to prevent the publication or continued publication of an advertisement is extended in relation to a comparative advertisement which he considers is not permitted under Regulation 4A.

The duties of the Commission, the Radio Authority and Welsh Authority in relation to misleading advertisements are extended to apply to comparative advertisements.

A Regulatory Impact Assessment of the costs and benefits which will result from these Regulations has been prepared. Copies have been placed in the libraries of both Houses of Parliament and can also be obtained from the Consumer Affairs Directorate, Room 464, 1 Victoria Street, London SW1H 0ET.

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