

EU News

EUROPEAN NEWS ON ADVERTISING-RELATED ISSUES

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Misleading and Comparative Advertising

Public Consultation on Directive concerning Misleading and Comparative Advertising

Following the recently closed consultation on the application of the Unfair Commercial Practices directive which covers exclusively B2C practices, the Commission is now launching a consultation on the B2B advertising and marketing practices contained in the consolidated directive from 2006 on Misleading and Comparative Advertising. The consultation will close on December 16, 2011.

The aim of the consultation is to "identify any problematic issues in the interpretation or application of the Directive and explore options for its possible review, including measures which could enhance cooperation between national authorities in the enforcement of cross-border cases."

Take part in consultation here: http://ec.europa.eu/justice/newsroom/consumer-marketing/opinion/111021_en.htm
Directive concerning misleading and comparative advertising (2006): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0114:EN:NOT>

Further information on misleading and comparative advertising: http://europa.eu/legislation_summaries/consumers/consumer_information/132010_en.htm

Digital Agenda

Copyright: Commission Brokers Agreement on Out-of-Commerce Books

A solution is at hand for accessing books that can no longer be found on store-bookshelves but are still available in collections and archives of Europe's libraries. These out-of-commerce books will soon be available online as a result of a Memorandum of Understanding signed by libraries, publishers, authors and collecting societies.

Commissioner Barnier said: "This agreement marks an important step forward by stakeholders to find viable and concrete solutions to further the creation of Europe's digital libraries and ensure access to our rich cultural heritage."

Memorandum of Understanding (MoU) on Key Principles on the Digitisation and Making Available of Out-of-Commerce Works – Frequently Asked Questions: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/619&format=HTML&aged=0&language=EN&guiLanguage=en>

Public Consultations on Access to Telecoms Networks

The European Commission has launched two public consultations related to access for alternative operators to the fixed telephone and broadband networks of established operators in October 2011. The consultations are part of Commission efforts to boost the Single Market for telecoms services by ensuring consistent and coherent approaches to regulating telephone and broadband networks in all EU Member States.

The first consultation concerns non-discriminatory access for alternative operators to the infrastructure and services of dominant telecom operators. The second concerns the way national regulators calculate prices that operators have to pay for this wholesale access (cost-orientation remedies). The results will help the Commission to draft Recommendations for a consistent, investment-friendly application of non-discrimination and price control remedies.

Both consultations are open to telecoms operators, consumer organisations, national regulators, Member States and other interested parties until November 28, 2011.

The consultation document is available at: http://ec.europa.eu/information_society/policy/ecomms/index_en.htm

Online Advertising

Industry presents Self-Regulatory Initiatives on Online Behavioural Advertising

Representatives of EASA (European Advertising Standards Alliance) and IAB (Internet Advertising Bureau) Europe met with Article 29 Working Party delegates to present the pan-European self-regulation that aims at enhancing transparency & consumer control over Online Behavioural Advertising (OBA) in September 2011.

While the transposition of the revised e-Privacy Directive is ongoing at EU Member State level, industry is advancing its self-regulatory regime that aims to enhance transparency and choice for consumers. At the heart of the initiative is a commitment to place a small and easily recognisable symbol or icon in display advertisements on websites. With one click, this will allow consumers to find out more information and exert greater control over behavioural advertising, including via a pan-European website. This is being made available in many different European languages. The initiative offers consumers and businesses a harmonised approach across Europe to safeguard privacy. Your Online Choices Website: <http://www.youronlinechoices.eu/>



Online Advertising

Updated ICC Code to Cover Digital Advertising

The International Chamber of Commerce (ICC) published the updated version of its "Code of Advertising and Marketing Communications" in September 2011. This ninth revision of the Code ensures that in addition to traditional advertising all forms of marketing communications are covered. That means that the new version now also covers forms of digital advertising.

The main changes are that the new revision has integrated the applicability of rules on digital interactive marketing communications throughout the Code, and in particular the rewriting of chapter D to ensure these cover all digital interactive media techniques, platforms or devices.

For the first time the Code addresses responsibility with respect to the use of online behavioural targeting in the delivery of advertisements. Other significant changes relate to the rules on environmental claims.

The ICC has also launched a website, called the Codes Centre, which is a one-stop resource for everyone involved in marketing and advertising products worldwide.

The new consolidated ICC Code: http://www.codescentre.com/images/downloads/660%20consolidated%20icc%20code_2011_final%20with%20covers.pdf

Website "The Codes Centre": <http://www.codescentre.com/>

IAB Europe urges Member States to consider Impact of an overly strict Consent for Cookies

In October, IAB (Internet Advertising Bureau) Europe and IAB Belgium launched the website www.cookieedemosite.eu that dem-

onstrates the serious consequences for the consumers' surf experience of the overly strict consent requirement amendment on cookies and other storing technologies as adopted by the Dutch Parliament on 22 June 2011 (which still needs to be confirmed or rejected by the Dutch Senate.)

The amendment would require websites to receive a user's explicit consent before placing certain cookies on their computer. Some groups and advocates are pushing for similar laws in EU/EAA countries that have not yet transposed the E-Privacy Directive. Recent research conducted by Nielsen on some of the most popular websites found that more than half the cookies would be captured by the Dutch law. "The debate on the use of cookies has been rather theoretical so far and we hope a real life demonstration website will help policy makers in Europe and Dutch Senators assess the impact of an overly strict consent provision properly." said Patrick Marck, General Manager IAB Belgium.

Further information: <http://www.iabeurope.eu/news/iab-europe-urges-eu-member-states-to-consider-negative-impact-of-an-overly-strict-consent-for-cookies.aspx>

Alcohol

World's largest alcohol advertising markets agree common standards of self-regulation across social media

Leading European & U.S. spirits producers agree on a common approach to self-regulation of digital and social media in the world's largest advertising markets in September 2011:

- Focus on promoting responsible drinking and consistent age checking
- Brand pages on social media sites to be monitored and in-

appropriate user-generated content removed

- European producers report on their commitments and update their standards to remain at vanguard of self-regulation

The advertising of spirits drinks through social networking sites, blogs, mobile apps and user-generated content will be subject to new guidelines agreed and published on September 21, 2011 by top spirits producers from Europe and the United States. The new guidelines, applicable from September 30, 2011, will extend the principles of responsible spirits advertising to cover all forms of digital marketing.

Further information: <http://www.eaca.be/news/pressdetail.asp?release=295>

Revised "EFRD Common Standards on responsible Marketing Communications": http://www.eaca.be/_upload/documents%5Cresponsibleadvertising%5CEFRD%20CS%20with%20Digital%20Media-May%202011.pdf

Gambling

Report on "Online gambling in the Internal Market" adopted

The Internal Market and Consumer Protection Committee (IMCO) of the European Parliament adopted the report on "Online gambling in the Internal Market" in September 2011. The non-legislative resolution by MEP Jürgen Creutzmann (ALDE, Germany) sets out Parliament's initial position on a Commission Green Paper of March 2011.

The parliamentary IMCO Committee agreed on the following points:

- **Subsidiarity plus coordination**

The resolution rejects the idea of an EU law to regulate online gambling and emphasises that regulation of all gambling is subject to the subsidiarity

principle. Member States are therefore free to determine how gambling is organised, and hence may maintain government monopolies or bans if they so wish.

- **Gambling licence for operators**

To fight the black market, the resolution suggests introducing a licensing model to ensure that gambling providers meet the criteria imposed by the host Member State and that competition is fair and transparent.

- **Protecting minors and preventing addiction**

The resolution notes that online gambling "may involve a greater risk of addiction" inter alia due to "increased ease of access and the absence of social control". The EU needs to adopt common standards for consumer protection, the resolution says.

It also emphasises that in order to protect especially vulnerable and young players, controls such as age verification and restrictions for electronic payment need to be in place before any gaming activity begins.

The report on online gambling is scheduled for a plenary vote in Strasbourg in November.

Report on online gambling in the Internal Market (Sept.2011): <http://www.europarl.europa.eu/document/activities/cont/201110/20111014ATT29350/20111014ATT29350EN.pdf>

Further information: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+IM-PRES+S+20111003IPR28106+0+DOC+X+ML+VO/EN&language=EN>



Consumer Protection

New EU rules on consumer rights to enter into force

The new EU Consumer Rights Directive has been formally adopted by Member States in the EU's Council of Ministers. The new legislation will strengthen consumers' rights in all 27 EU countries, particularly when shopping online.

After publication in the EU's Official Journal, governments will have two years to implement the rules at national level. This approval follows an overwhelming vote to back the rules by the European Parliament in June 2011. The European Commission put forward the proposal in October 2008. The final agreement between Parliament and Council on the Consumer Rights Directive was negotiated by EU Justice Commissioner Viviane Reding in June this year.

The **ten most important changes** in the EU legislation for consumers are:

- 1) The proposal will eliminate hidden charges and costs on the Internet
- 2) Increased price transparency
- 3) Banning pre-ticked boxes on websites:
- 4) 14 Days to change your mind on a purchase
- 5) Better refund rights
- 6) Introduction of an EU-wide model withdrawal form
- 7) Eliminating surcharges for the use of credit cards and hotlines
- 8) Clearer information on who pays for returning goods
- 9) Better consumer protection in relation to digital products
- 10) Common rules for businesses all over Europe

Further information: http://ec.europa.eu/justice/consumer-marketing/rights-contracts/directive/index_en.htm

Press release of the European Commission: <http://europa.eu/rapid/pressReleasesAction.do?reference=M EMO/11/675&format=HTML&aged=0&language=EN&guiLanguage=en>

Press release of the European Council: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/124997.pdf

European Commission proposes an optional Common European Sales Law

The Commission has proposed a legally solution which is the "optional" Regulation, in order to "harmonise" EU contract law relating to sales. The Commission argues that the draft proposal will provide one common (yet optional) regime of contract law that is identical for all 27 Member States so that traders no longer need to wrestle with the uncertainties that arise from having to deal with multiple national contract systems, whilst providing the same high level of consumer protection in all Member States.

The Common European Sales Law will be applicable:

- only if both parties voluntarily and expressly agree to it;
- to cross-border contracts where most of the problems of additional transaction costs and legal complexity arise; Member States will have the choice to make the Common European Sales Law applicable to domestic contracts as well;
- to contracts for the sale of goods – the bulk of intra-EU trade – as well as digital content contracts, such as music, movies, software or smart-phone applications;
- for both business-to-consumer and business-to-business transactions;
- if one party is established in a Member State of the EU. Traders could use the same set of contract terms when dealing with other traders from within and from outside the EU, giving the Common European Sales Law an international dimension.

Draft EU Sales Contract Regulation: http://ec.europa.eu/justice/contract/files/common_sales_law/regulation_sales_law_en.pdf

Further information: http://ec.europa.eu/justice/newsroom/news/20111011_en.htm

Collective Redress

Parliament ECON Hearing on Collective Redress in Competition Policy

The Parliament ECON Committee (Committee for Economic and Monetary Affairs) held a hearing on collective redress in September 2011. The European Commission intends to avoid US-type litigations and will allow no contingency fees for lawyers, but believes that consumers must be given the option of class actions when alternative dispute resolution (ADR) systems fail.

EU Competition Commissioner, José Almunia, said he was working with Justice Commissioner Viviane Reding and Health and Consumer Protection Commissioner John Dalli to develop Principles on collective redress to be presented in the form of a Communication.

Rapporteur Andreas Schwab (Germany, EPP) agreed that is essential to develop common principles in the EU and warned against too harsh recommendations to companies, bearing in mind the current difficult economic situation.

Presentation of EU Competition Commissioner, José Almunia: [http://www.europarl.europa.eu/document/activities/cont/201109/20110922ATT27247 EN.pdf](http://www.europarl.europa.eu/document/activities/cont/201109/20110922ATT27247/20110922ATT27247 EN.pdf)

Pharmaceuticals

European Commission wants clearer rules for information on prescription medicines

The European Commission adopted revised proposals clarifying the information that indus-

try can supply to the public on prescription-only medicines in October 2011.

The proposals maintain the current advertising ban on the prescription-only medicines.

The proposals foresee that:

- **Only certain information on prescription-only medicines would be allowed:** For example, information on the label and on the package leaflets; information on prices; on clinical trials; or on instructions for use.
- **Only certain channels of communication will be allowed for providing information:** For example, information on officially registered Internet websites; or printed information made available when specifically requested by members of the public. A publication in general print media will not be permitted.
- **All information must be of highest quality:** For example, it must be unbiased; it must meet the needs and expectations of patients; it must be evidence-based, factually correct and not misleading and understandable.
- As a general principle, information which has not been approved before needs to be **verified by competent authorities** prior to its distribution.

The revised proposals will now be debated by both the European Parliament and the Council of Ministers.

Further information: http://ec.europa.eu/health/human-use/information-to-patient/legislative-developments_en.htm

Text of the amended proposal (Directive): http://ec.europa.eu/health/files/patients/ip_10-2011/dir_ip_2011_en.pdf

Text of the amended proposal (Regulation): http://ec.europa.eu/health/files/patients/ip_10-2011/reg_ip_2011_en.pdf