

# COMPARATIVE ADVERTISING

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*Abstract. Using comparative advertising a company compares its brand, directly or not, to one or several brands. The comparison must be loyal, truthful, undeceiving and objective.*

*At the European Union level the comparative advertising was accepted through 97/55/CE Directive and defines comparative advertising as the one which identifies, explicitly or not, a competitor or the goods or services that it offers.*

*Comparative advertising generated a lot of law suits between competitor companies starting with imitating the features presented in an ad (the law suit between Lever and Procter & Gamble companies concerning the use of "whiteness" theme in laundry detergent ads) until price comparisons (the law suit between Carrefour and Leclerc related to online comparison of their products` prices).*

*Key words: comparative advertising, law, advertising investments*

Comparative advertising is an advertising argumentation technique where the advertising message is about making comparisons (necessarily objective) about features (quality, price, delivery terms, services and others) of a company's products as compared to the products of the same type belonging to one/several competitors. Therefore, companies pursue in getting immediate advantages, at least by deflecting attention of some of the buyers towards their brands.

Comparative advertising puts together face to face the advertised product and one or several of the competitors` products (direct comparative advertising) or a general product whose brand has not been revealed (indirect comparative advertising).

For example, in France, comparative advertising was authorized in 1992. It applies to some similar products and services using the same sales conditions (to maintain objectiveness, the comparison is made only between the material elements of the two competitive offers). Before it is broadcast, the comparative message must be made known to the opposite party in due time to be eventually cancelled. The comparison must be loyal, truthful, undeceiving and objective.

Comparative advertising has both advantages and disadvantages for the companies/institutions that use it. Here are the advantages of the comparative advertising: the message and the brand are better kept in mind, detailed and explicit information reduces confusion, improves the product's perception, gives trustworthy, the buying intentions increase, it promotes competition etc. This kind of advertising is oriented towards the consumer because it advertises not only a product but it also insures the consumers to be well informed. The disadvantages of negative advertising include: decrease of the compared brands` fame (mainly through price comparisons), high promotion costs (the companies whose products are put in a bad light are forced to reply by developing new advertising campaigns insuring a good positioning of products and reducing the negative advertising's effects and which are a lot more expensive), increase of law suits number between different companies due to this type of advertising etc.

## **Law pertaining to comparative advertising**

At the European Union level the comparative advertising was accepted through 1997 Directive which added this issue to the provisions in matters of deceiving advertising referred to in a Directive from 1984 (84/450 Directive).

Therefore, 97/55/CE Directive allows comparative advertising according to certain conditions, and the EU member states which forbade any form of products/services advertising as compared to the competitors`, had to change their law in order to approve of this type of advertising.

The Directive defines comparative advertising as "the one which identifies, explicitly or not, a competitor or the goods or services it offers."

The Directive establishes the conditions according to which comparative advertising can be made. Therefore it is allowed under the following conditions:

- if it is not deceiving;
- if goods or services having the same scope or destination are compared to;
- if one or several fundamental, pertinent, verifiable and representative features are compared to, in an objective manner, among which the price also can be included, which belong to some goods or services;
- if confusion is not created on the market between that who promotes himself and a competitor or between commercial brands, commercial names or other distinctive signs, goods or services belonging to that who promotes himself and those of a competitor;
- if a competitor's commercial brands, commercial names, other distinctive signs, goods, services, activities or circumstances are not discredited or denigrated;
- if products having the same indication, in case of products with geographical indication, are compared to in each case;
- if a certain commercial brand's fame, commercial name or other distinctive signs belonging to a competitor or the geographical indication of a certain competitor's product are not incorrectly taken advantage of;
- if goods or services are not presented as imitation or remaking of certain goods or services bearing a commercial brand or a protected commercial name;
- the comparisons referring to a special offer must clearly indicate and in a straightforward manner the offer's ending date or, if case may be, if the special offer refers to the available stock of goods and services and if the offer has not yet started, the starting period when the special price will be applied or other particular conditions.

These provisions are contained by the Romanian Law no. 148 from July 26<sup>th</sup> 2000 related to advertising, amended by the Decision no. 17/2003 related to amendment of art. 8 letter e) of Law no. 148/2000 related to advertising.

### **Law suits generated by comparative advertising**

The first dispute over the laundry detergents' whiteness comparison took place at the end of the 60's between Lever and Procter & Gamble companies. Lever complained at the Trade Court from Paris that Procter & Gamble were constantly imitating their whiteness comparison theme and thus they were disloyal competitors. The Court of Appeals from Paris rejected the charges on the grounds that the idea must come from the affected company if it was to talk about infringement of the competitiveness' principles and the "whiteness" theme has been long time used.

Detergents, tins, soaps are just a few of the anonymous landmarks whose sole reason to exist is to put their features in a most favourable light possible. This communication solution must be carefully treated though out of two big reasons. One of them is to keep the message pertinent. This case mostly appears when the communicated benefit is a general thing for this category, almost all detergent ads resort to the same landmarks/techniques (laundry's whiteness, quantity of laundry washed, price) and at a certain point the landmarks become vague and relative which can lead consumers to confusion. The other reason is the vulnerability of such an approach: the others competitors may react and offer a better product.

According to law, the advertising message used in comparative advertising must be neutral. The comparison must not put a competitor or its products in a false light. For example, the ad saying that "Renault sells twice more cars in Germany than Volkswagen in France" was forbidden. Even if figures showed that this was true, the ad was considered illegal. The Great Court from Paris found that the advertising message was not objective because it made people understand that this was due to the inferior quality of the German competitor manufacturer's cars.

In France, Carrefour made a complaint against its competitor Leclerc who was doing illegal advertising on [www.quistlemoincher.com](http://www.quistlemoincher.com) (translation from French: „who is cheaper“). On this webpage the prices of 3.500 products sold in the two distribution networks were being compared to, "in order to restore the truth regarding real prices", as stated on the site. Except Carrefour, the comparisons also included Auchan,

Intermarché retailers but not Lidl which actually had the lowest prices. The Court decided to close up the site, judging on the lack of objectiveness in prices comparison, since the information could not be verified concerning parameters retained for the company.

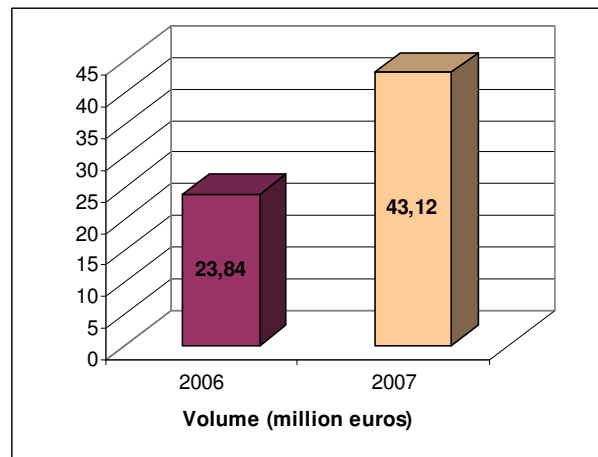
### Case study: Romania's dish detergent market

The dish detergent market keeps increasing every year, mainly due to a consumption increase. In terms of marketing this means a great deal of loyalty and trust that consumers show for the brands they use and at the same time, a proof of a growing steady market. The main players from this category have an extremely quick launch rhythm for which reason they focus their advertising on easily accessible environments to consumers. The most important detergent brands are: Fairy (belonging to Procter&Gamble Company), Pur (Henkel) and Axion (Colgate-Palmolive). The rough competitiveness between the three companies generates important advertising investments (table 1).

Brand	Insertions no.	Euro
Fairy	7.066	17.012.949
Pur	4.264	9.166.727
Axion	4.386	8.869.670

*Table 1 - Most advertised dish detergent brands (2007) (television, press and radio) Source: Alfa Cont Mediawatch*

The ad is the key of success in this category, the pile of cleaned shiny dishes attracting buyers in search of more advanced products. The dish detergent ads are an example of indirect comparative advertising promoted on Romanian TV channels. Therefore, one of the most efficient methods of advertising was showed in a demonstration in August 2005 when Fairy proved to be a better detergent than Pur, when one 500 ml bottle of detergent washed 8.734 dishes. The results of this outdoors demonstration were subsequently advertised via all available communication channels.



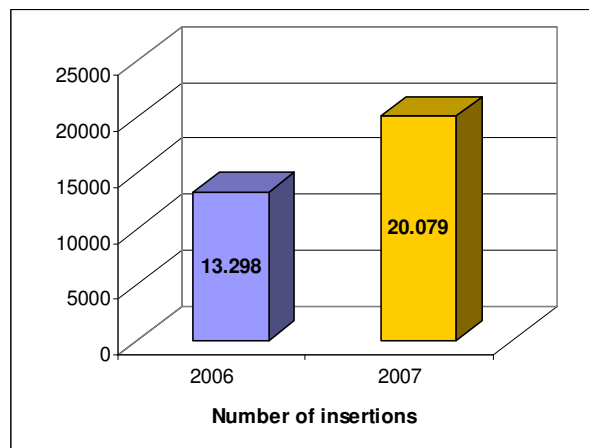
*Fig. 1 - Dish detergent advertising gross\* volume (television, radio and press)*

*\* Monitoring according to advertising costs*

*Source: Alfa Cont Mediawatch*

In the first two months of 2008, the television, press and radio advertising costs for all dish detergent brands registered a total gross amount of 5,6 million euros (counted as per list tariffs), according to Alfa Cont monitoring. The consumption is 73% higher than in the same period last year. And the number of advertising insertions increased with 43% reaching 2.130. Last year, the total gross costs incurred for television, press and radio advertising of all dish detergent brands reached 43,12 million euros (counted as per list tariffs) (fig. 1). As a net value, the budget may be around 10 million euros. As compared to 2006,

the gross volume increased with 80%. There were 20.079 television, press and radio advertising insertions, namely a 50% increase (fig. 2).



**Fig. 2 – The number of insertions\* for dish detergent (television, radio and press)**

*\* Monitoring according to advertising costs*

*Source: Alfa Cont Mediawatch*

Due to the rough competitiveness between the three brands, advertising companies resorted to radio too. Television remains the main dish detergent brands` advertising support.

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