

NOTE

[The Business Protection from Misleading Marketing Regulations 2008 \(the BPRs\)](#)

Key extracts

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The Regulations have two main provisions:

1. They prohibit business from advertising products in a way that misleads traders; and
2. They provide a list of conditions that need to be met in order for comparative advertising to be permitted.

1. An advertisement is misleading for the purpose of the BPRs if it:

- a) In any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches; and by reason of its deceptive nature, is likely to affect their economic behaviour; or
- b) For those reasons, injures or is likely to injure a competitor (The BPRs, Regulation 3 (2))

In order to determine whether an advertisement is misleading, all of its factors will be taken into account. Additionally, the BPRs provide [specific information](#) that will be considered (The BPRs, Regulation 3 (3), (4) and (5))

2. The BPRs provide that comparative advertising is permitted only if certain conditions are met (The BPRs, [Regulation 4](#)). For the purposes of the Regulations, comparative advertising '... means advertising which in any way, either explicitly or by implication, identifies a competitor or a product offered by a competitor.' (Regulation 2)

Comparative advertising shall, as far as the comparison is concerned, be permitted only when the following conditions are met:

- (a) It is not misleading under [Regulation 3](#)
- (b) It is not a misleading action under regulation 5 of the [Consumer Protection from Unfair Trading Regulations 2008](#) or a misleading omission under regulation 6 of those Regulations
- (c) It compares products meeting the same needs or intended for the same purpose
- (d) It objectively compares one or more material, relevant, verifiable and representative features of those products, which may include price
- (e) It does not create confusion among traders:
  - (i) Between the advertiser and a competitor, or
  - (ii) Between the trade marks, trade names, other distinguishing marks or products of the advertiser and those of a competitor
- (f) It does not discredit or denigrate the trademarks, trade names, other distinguishing marks, products, activities, or circumstances of a competitor
- (g) For products with designation of origin, it relates in each case to products with the same designation
- (h) It does not take unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products
- (i) It does not present products as imitations or replicas of products bearing a protected trademark or trade name.

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