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Netherlands – Civil Code



Full title:	Dutch Civil Code 1992 on Misleading and Comparative Advertising
Title of relevant section:	<p>Book 6: Law of Obligations; Title 3: Tort (Unlawful Acts); Section 4: Misleading and Comparative Advertising; Articles 194-196</p> <p>Act of 28 March 2002 aligning Book 6 of the Civil Code, with Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising. (Staatsblad 2002, nr 187) Entry into force: 12/04/2002. Article 1C of the following Act inserted Art. 194a into Book 6 of the Civil Code, also amending Arts 195 (Art. 1D) and 196 (Art. 1E) https://zoek.officielebekendmakingen.nl/stb-2002-187.html</p>
Relevant Amendments	<p>1. Act of 25 September 2008 bringing Volumes 3 and 6 of the Civil Code and other Acts into line with Directive 2005/29/EC. (Official Gazette 2008, n. 397) https://zoek.officielebekendmakingen.nl/stb-2008-397.html (Art. 194a(2a) amended by Art. 2c; Art. 194(1) amended by Art2b.</p> <p>2. Act of March 29, 2016 amending Book 6 of the Civil Code in connection with the prevention of acquisition fraud by making misleading statements against those who act in the exercise of their profession, company or organization and amending the Criminal Code in connection the criminalization of acquisition fraud. (Gazette 2016 / n. 133) https://zoek.officielebekendmakingen.nl/stb-2016-133.html (Arts 1A inserts 3 new paras after Art. 194(1); Art. 1B replaces Art. 196(1))</p>
Chapter:	Section 6.3.4 – Title 3: Tort (Unlawful acts) – Book 6: The Law of Obligations
Section 4	Misleading and Comparative advertising
Article 194:	<p>Misleading public announcements</p> <ol style="list-style-type: none"> 1. A person who makes public or allows to be made public an announcement regarding goods or services which he, or the person on whose behalf he acts, presents in the course of a professional practice or business, acts tortuously (unlawfully) against another person acting in the course of his business¹, if this announcement is misleading in one or more of the following respects, for example as to: <ol style="list-style-type: none"> a. The nature, composition, quantity, quality, characteristics or possibilities for use; b. The origin, the method and the date of manufacturing; c. The size or volume of the goods in stock; d. The price or its method of calculation; e. The grounds for or the purpose of the offer; f. The awarded distinctions, certificates (references) or other assessments or declarations of third persons, or the used scientific or technical terms, the

¹ The section reading “against another person acting in the course of his business” was inserted by Art. 2b of Stb 2008/397

URL of source: <http://www.dutchcivillaw.com/civilcodebook066.htm> (English Translation);

http://wetten.overheid.nl/BWBR0005289/2017-07-01#Boek6_Titeldeel3_Afdeling4 (Dutch Leg - Consolidated Text)

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- technical findings or the statistical data;
- g. The conditions under which goods are supplied, services are rendered or payment is made;
 - h. The extent, content or duration of the warranty (guarantee);
 - i. The identity, qualifications, capacity or competence and the person who or under whose control or supervision or with whose cooperation the goods are or will be manufactured or are presented or the services are or will be performed.
2. A communication (announcement), public or specifically directed at another, is in any case misleading if there is a misleading omission, where essential information which the recipient needs, acting in the exercise of a profession, business or organization, in order to make an informed transactional decision, is omitted.
 3. A misleading omission also exists if the essential information referred to in para. 2 is kept hidden/concealed or supplied or presented in an unclear, incomprehensible, ambiguous way or in an untimely fashion, or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, this causes or is likely to cause him, acting in the exercise of a profession, business or organization, to take a transactional decision that he would not have taken otherwise.
 4. In assessing whether there is a misleading omission referred to in paragraph 2 and 3, Article 193d, paragraph 4², and Article 193e (a-d³), shall apply accordingly.
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Article 194a:

Comparative advertising⁴

1. Comparative advertising means any advertising that explicitly or by implication identifies a competitor or goods or services offered by a competitor.
 2. Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:
 - a. It is not misleading or a misleading commercial practice referred to in Articles 193c to 193g⁵;
 - 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;
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² Art. 193d (para. 4): The factual context, the limitations of the communication medium and any measures taken by the trader to make the information available to consumers by other means shall be taken into account in deciding whether material information has been omitted or hidden.

³ In the case of an invitation to purchase, if not already apparent from the context, the following information shall be regarded as material in the sense of Article 6:193d paragraph 2:

- a. the main characteristics of the product, to an extent appropriate to the medium and the product;
- b. the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
- c. the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- d. the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
- e. if there is a right of withdrawal or cancellation, the existence of such a right.

⁴ Article 1C of the following Act inserted Art. 194a into Book 6: Act of 28 March 2002 amending Book 6 of the Civil Code, with Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising. (Staatsblad 2002, nr 187) Entry into force: 12/04/2002.

⁵ The section: "or a misleading commercial practice referred to in Articles 193c to 193g" was inserted by Art. 2c of Act of 25 September 2008 bringing Volumes 3 and 6 of the Civil Code and other Acts into line with Directive 2005/29/EC. [NL](http://www.gregsregs.com/downloads/NLChap6.3.3ADCCUnfairCommPracWR.pdf) (Official Gazette 2008, n. 397) See G-Regs translation of relevant sections: <http://www.gregsregs.com/downloads/NLChap6.3.3ADCCUnfairCommPracWR.pdf>
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- 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 trademark or trade name.
3. Any comparison referring to a special offer shall indicate 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.
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Article 195:

Revised burden of proof with respect to the correctness and completeness of the advertisement

1. If a right of action (legal claim) is instituted (filed) in pursuance of Articles 6:194 or 6:194a against someone who has entirely or partially determined or caused to determine the content and formulation of the announcement, then the burden of proof rests on him with regard to the correctness or completeness of the facts which have been set out in the announcement or which as a result are suggested through it and on which the alleged misleading character of the announcement is based or on which the alleged disallowed comparative advertisement is based. In the event of comparative advertisements the person who has entirely or partially determined or caused to determine the content and formulation of the announcement, must provide within a short period of time evidence as to the material correctness and completeness of the factual data and claims in the advertisement.
 2. If someone who has entirely or partially determined or caused to determine the content and formulation of the announcement, has acted tortiously (unlawfully) according to Article 6:194 or 6:194a, then this person is liable for the damage caused as a result, unless he proves that he is not to blame for the damage and that he is neither accountable for it on another ground.
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Article 196:

Prohibition of the further use of the announcement or comparative advertisement and the publication of a correction

1. If a person, by disclosing or allowing to make public an announcement as meant in Article 6:194 or by making an unlawful comparative advertisement, or by specific targeting or allowing targeting of that communication/ announcement to another, has caused or threatens to cause damage to another person, then the court may, upon a right of action (legal claim) of this other person, not only ban any further use of the announcement or comparative advertisement, or specific targeting or allowance of targeting of such announcement to another, but it may also order the party to publish a correction of that announcement or comparative advertisement in a way to be set by court.
 2. If the court awards a right of action (legal claim) as meant in the previous paragraph against someone who is not liable as well for the damage referred to in Article 6:195, paragraph 2, then Article 6:167, paragraph 3, shall apply accordingly.
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