

Full title of law or regulation	This guidance is extracted from www.checksrc.nl and http://www.checkdereclamecode.nl/ ; set out below is the 'General Information about Unfair advertising' section
Title of relevant section	Unfair advertising/ General: http://www.checksrc.nl/check/oneerlijke_reclame/checklist/
Transactional Decision	<p>Means a decision made by a consumer as to whether, and if so how and on what terms he purchases a product, makes a payment in whole or in part (i.e. in instalments), retains or disposes of a product, or exercises a contractual right in relation to the product, irrespective of whether or not the consumer decides to act or refrain from acting (i.e. decides to conclude a transaction)</p> <p>When assessing whether or not advertising is misleading, it must be determined whether the advertisement has influenced/ affected the economic behaviour of the consumer. This means assessing whether a consumer has taken or could have taken a decision about purchasing a product or enter into another transaction due to incorrect, incomplete or unclear information in the advertisement. Importantly, it is not necessary for the consumer to actually buy something due to the misleading advertising, but that he could have decided to enter into a transaction. In each complaint, the Committee checks whether this requirement is met. If the Committee considers that there is an error, but it cannot lead to a wrong decision taken on the part of the consumer, it will in principle reject the complaint. Example Case: RCC2009 / 00100: https://www.reclamecode.nl/webuitspraak.asp?ID=7609&acCode</p> <p>If the advertisement does not concern a commercial activity nor does it involve action/ dealing from an economic perspective or possible influence on the economic behaviour of the consumer, the misleading advertising rule does not apply (see Board of Appeal (CVB) case: 2017/00116). If necessary, the Committee may, depending on the complaint, review/ check other provisions of the NRC Example Case: RCC2009 / 00853: https://www.reclamecode.nl/webuitspraak.asp?ID=25591&acCode</p>
Average Consumer	<p>This is the consumer who is reasonably well-read/ educated and well-informed. Whether advertising is misleading depends on the view/ opinion of the average consumer. It is not necessary to carry out a case-by-case study into the views of the consumer. Being able to envisage as well as possible whether the average consumer is correctly informed will suffice.</p> <p>It may be that the expression is aimed at a specific target group. In that situation, the average member of that target group must be looked at. For a business consumer (i.e. in case of B2B) it is assumed that he/she is typically more critical and expert than a normal consumer. In certain cases, specialist knowledge can be expected from the average member of a specific target group; see CVB case 2016/00916: https://www.reclamecode.nl/webuitspraak.asp?ID=178816&acCode</p> <p>If, on the other hand, it is a vulnerable target group (advertisements that are specifically aimed at young people or the elderly), a consumer who is less critical and therefore more likely to have been misled should be assumed.</p>
Information Requirements	Consult the information requirements for comprehensive information on, inter alia, the "General Statutory Information Requirements" (now labelled as "Legal information requirements for online advertising") and the "additional information requirements for an invitation to purchase"
Medium/ Channel	The medium is important in the assessment of misleading advertising. As a rule of thumb, the more information that can be given in a specific medium, the stricter the requirements to include all the relevant information. For example, a television commercial is not suitable for listing a lot of conditions, but a website is ideally suited to this. If the medium is limited, a reference to restrictive terms could be enough (depending on the case)

Specific Target Audience	<p>In the case of a specific target group, such as children (12 yrs or younger), or people with physical or mental disability, due to their age or credulity (gullibility), account should be taken of the fact that these target groups may be misled faster by the advertisement or the products offered than the average consumer. The assessment then takes place from the point of view of the average member of the group in question.</p> <p>A business target group assumes that it is usually more critical and expert than a regular consumer. In certain cases specialist knowledge can be expected from the average member of a specific target group (see CVB case 2016/00916). If, on the other hand, it concerns a vulnerable target group (expressions specifically aimed at young people or the elderly), a consumer who is less critical and therefore more likely to have been misled should be assumed.</p>
Invitation to purchase	<p>Advertising in which a product is offered for a particular price.</p> <p>An invitation to purchase also falls under the concept of advertising. The only difference compared to "regular" advertising is that in an invitation to purchase there is already enough information for the consumer to be able to decide, for example, whether he wants to buy a particular product or wants to subscribe to a particular service.</p> <p>On the basis of a ruling by the ECJ (Case C-122/10 Konsumentombudsmannen/ Ving Sverige AB, Judgment of 12 May 2011) *, an invitation to purchase can also be made without an order mechanism. However, if the advertisement contains such a mechanism, it can be assumed that the consumer has sufficient information to make a decision about a transaction. In that case, the consumer knows what he is buying and at what price.</p> <p>If an ordering mechanism is missing, it depends on the circumstances of the case as to whether there is an invitation to purchase. It is decisive whether the consumer can make a decision on a transaction based on the information. There will usually be an invitation to purchase if:</p> <ul style="list-style-type: none"> • In the advertisement a (from) price is mentioned • Referring to a product in word or image (i.e. verbal or visual reference to a product) <p>The distinction between "regular" advertising and invitation to purchase is important for the information requirements that apply. See also Article 8.4 NRC with the accompanying explanation. Pay attention to the distinction between 8.4 (a-e) 8.4 (f-s) DAC/ NRC. The provisions of 8.4 (f – s) NRC are particularly important for an online shop/ webstore or a telephone order.</p> <p>*"an invitation to purchase exists as soon as the information on the product advertised and its price is sufficient for the consumer to be able to make a transactional decision, without it being necessary for the commercial communication also to offer an actual opportunity to purchase the product or for it to appear in proximity to and at the same time as such an opportunity"</p>
Pricing/ Displaying prices	<p>It is very important that if prices and rates are stated in an advertisement, they should be complete and clear. If this information is not properly stated, advertising will soon become unfair.</p> <p>Pay attention to fixed and unavoidable additional costs which will be charged separately to the consumer. If such costs are not shown in the context of an invitation to purchase, thereby affecting the consumer purchasing decision, the advertisement is contrary to Article 8.4 DAC/NRC (Kia Picanto case: 2012/00088 / English version: http://www.gregsregs.com/downloads/NL_PriceAdCase_KiaPicanto.pdf)</p> <p>Therefore, preferably mention prices including all fixed and unavoidable additional costs rather than mentioning them separately. Also refer to the Information Requirements checklist.</p>
Comparison websites	<p>The requirements of the Dutch Advertising Code in relation to responsible advertising apply not only to advertisements of independent comparison sites, but also to the comparable offer</p>

on that site itself. That means, for example, that correct prices should be compared. For travel deals, the prices to be complied with must be in accordance with the Advertising code for travel offers 2014, and in any case must include all fixed unavoidable costs. (file 2013/00690):

<https://www.reclamecode.nl/webuitspraak.asp?ID=125928&acCode>
