

Is a legal loophole opening for comparative advertising?

 By [Chris Moerdyk](#): [@chrismoerdyk](#)

4 Apr 2011

The new Consumer Protection Act (CPA) seems to be in direct conflict with South Africa's ban on comparative advertising. According to the act, the consumer has a right to information about products and services, namely, "consumers must be provided with the facts needed to make informed choices."

And there is only one way that any consumer can make an informed choice and that is to compare the pros and cons of competing brands, products and services.

Right now, advertising industry regulators argue that SA already allows comparative advertising but, in truth, any comparisons made are couched in innuendo and really not allowed to go the whole hog.

Copyright laws

Ironically, however, the stumbling block in terms of allowing full-blown comparative advertising has nothing to do with ad industry regulations but rather current SA legislation covering copyright. Using a competitor's logo type or symbol in an ad today would be a breach of the copyright legislation.

On top of this, many of SA's major consumer brands have been against comparative advertising in any shape or form simply because it disturbs their comfort zones. Advertisers prefer to just be allowed to claim "We are the best" and not open their products or services to any deeper scrutiny than that.

However, now that the new CPA insists on consumers being able to make informed choices, I cannot see how any can be made unless consumers can compare two or more products or services, side by side.

Big fish, little fish

Those who are against comparative advertising will argue vehemently that, if two big brands get into a comparative slanging match, the brands that will lose out will be the smaller ones which get forgotten in the hype involving the big players. They also argue that it would be quite easy for two big brands to contrive a comparative ad battle just to improve their market shares at the expense of lesser players. Very similar, in a way, to insider trading on the stock exchange.

Another argument is that one brand can make false comparative claims about a competitor, which is silly, really, because not only industry self-regulation but the law of the land prohibits false claims and can be contested successfully in court or in front of regulators.

On balance, there is no doubt that the benefit to the consumer of comparative advertising far outweighs the downside to the industry. By a long way.

Changes needed

Trouble is, to make comparative advertising a reality and to bring products and services in line with the CPA, legislation with regard to copyright infringements will have to be changed to allow the use of a competitor's symbol, slogan and claims in advertising.

There are many marketers who believe that comparative advertising is worth fighting for because it is in the interests of the consumer and a more competitive marketplace.

And that those who fight against comparative advertising are simply protecting their own interests at the expense of the consumer.

I wonder, however, whether anyone will bother to pick up the cudgels and fight this fight for the consumer. I am not holding my breath.

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