

## Comparative Advertising Lessons Learned after Deregulation in Germany

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## **Abstract**

Comparative advertising has been permitted in Germany in 2000. So far, advertising practitioners and researchers have neither reached a consensus on its effectiveness nor on its usefulness for corporate communication. The authors conducted two studies: One to capture the opinions of advertisers on the new format and one to assess its effectiveness.

In a survey questioning the 150 largest advertising agencies as well as the 150 biggest advertising spenders in Germany both groups view the fuzzy legal framework and the unclear effects of comparative advertising as main obstacles for a broader usage of the new format.

Empirical findings from the US suffer from methodological problems as well as conflicting results. The authors conducted an empirical study assessing the effects of comparative advertising based on a model taking into account the German legal framework as well as the consumer's decision process when selecting a certain product among various alternatives. The main finding is that comparative advertising is superior to non-comparative in one critical aspect: comparative advertising positively shifts the perception of product attributes used in the comparison.

## **1 Background: Legal Restrictions in Germany**

As opposed to the United States of America and several other European countries, comparative advertising had been forbidden for a long time in Germany. Hence, there was no need for corresponding research activities. However, in September 2000, German legislation was amended to allow this specific form of advertising and so practitioners and researchers are eager to learn about its effects.

German law defines comparative advertising as “every advertisement, that directly or indirectly allows recognition of goods or services offered by a competitor“ (§2 I UWG). According to §2 II UWG, a comparative advertisement would be considered inappropriate (and thus rebuked) if the comparison

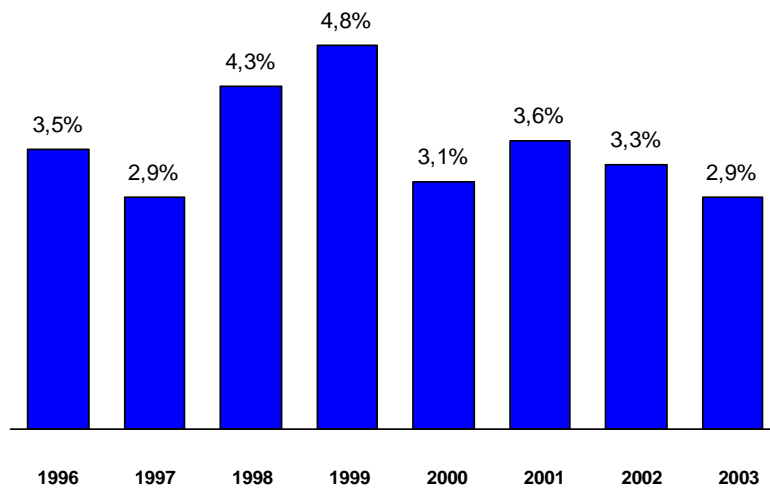
- does not refer to goods or services intended for identical usage (§2 II Nr. 1 UWG)
- does not refer in an objective manner to one or more significant, relevant, provable and typical attributes or to the price of these goods and services (§2 II Nr. 2 UWG)
- could lead to confusion between the advertiser and his competitor or the competitor’s goods or services or trade marks (§ 2 II Nr. 3 UWG)
- draws on the competitor’s brand reputation in an unfair manner or damages that reputation (§ 2 II Nr. 4 UWG)
- belittles or disparages goods, services, activities or personal or business topics of the competitor (§ 2 II Nr. 5 UWG) or
- exposes a product or service that is an imitation or fake of a registered trademark (§ 2 II Nr. 6 UWG).<sup>1</sup>

As one can easily see, the requirements are quite ambiguous and raise numerous issues regarding interpretation.<sup>2</sup> Those have to be sorted out in court decisions. Exhibit 1 shows that court decisions concerning comparative advertisement as share of total fair trading law decisions account for roughly 5% of all decisions in 1999, but then dropped to a pre-liberalization level of approximately 3-3,5% in the following years.

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<sup>1</sup> There are some more restrictions given through §3 UWG, but they seem to be neglectable in this context.

<sup>2</sup> see Tilmann (1997), p. 790-801.



*Exhibit 1: Court decisions concerning comparative advertisement as share of total fair trading law decisions<sup>3</sup>*

However, even if the limits have to be worked out first, it is possible to create advertisements that compare goods or services to those of competitors.<sup>4</sup> The change in law offers many new possibilities to advertisers.

## **2 How do advertisers judge comparative advertising?**

With a small number of exceptions, companies are reluctant to try the new form<sup>5</sup>. To analyze reasons for that restraint, the authors conducted a survey addressing the 150 largest advertising agencies<sup>6</sup> as well as the 150 biggest advertising spenders in Germany.

The most important results were:

- Only 22% of the advertising agencies have already been using comparative advertising.
- Advertising agencies prefer print media for comparative advertising (58%). Audio-visual media are used very rarely (17%). As reason for that the agencies surveyed refer to the up-to-dateness of print media.

<sup>3</sup> www.juris.de (accessed June 16th, 2004)

<sup>4</sup> see Steinhöfel (1998), p. 22.

<sup>5</sup> see Vongehr (2000), p. 20-25.

<sup>6</sup> Measured in terms of revenue.

- Asked about the success of their comparative campaigns, advertising agencies respond very positive: 78% rate their comparative campaigns as very successful or successful.
- 37% of the agencies will advise their clients to use comparative advertising in the future, 35% will discourage its usage. Those agencies, which already have used comparative advertising, will do so again in the future without any exception. Agencies, which have not used comparative advertising in the past, are much more reluctant to do so in the future. The high number of undecided agencies (28%) is a strong indicator that advertising agencies are still unsure about comparative advertising's legal framework and its effectiveness.
- The corporations surveyed take a much more conservative approach towards comparative advertising compared to their advertising agencies: Only 17% have used comparative advertising so far. They primarily used print media (48%), but also employed audiovisual media (30%).
- Only 50% of the corporations surveyed rate their comparative campaigns as very successful or successful.
- Though many corporations have not used comparative formats so far and the great majority is still very unsure about its effectiveness, corporations do hold strong opinions about potential usage scenarios of comparative advertising: 53% rate comparative advertising as very effective for product launches, 38% think it is also effective for established brands. As most valuable contributions of comparative advertising advertising agencies and corporations alike rate its superior awareness and its higher information value for consumers.
- 65% of corporations surveyed will not use comparative advertising in the future, 25% are open for it. Compared with the equivalent figure for the advertising agencies surveyed it becomes obvious that primarily corporations cause the current reluctance against the usage of comparative formats. Both groups view the ambiguity of the legal framework as main obstacle for the usage of comparative advertising. Another reason is that "...in Germany we don't know anything about the effects of comparative advertising...", as the head of advertising at MobilCom AG, one of the major companies in the German telecommunication industry, states. Practitioners in Ger-

many can only guess about its effects and their opinions range from “irritates the customer” to “increases brand attractiveness”<sup>7</sup>.

The fuzziness of the legal framework including the various issues regarding interpretation of the new advertising law will be resolved as German courts will in the course of time deliver more and more verdicts about its appropriateness in the cases brought to them. To resolve the other obstacle – unknown effectiveness – more research is needed.

### **3 What are the effects of comparative advertising?**

There are numerous publications regarding the effects of comparative advertising in the United States.<sup>8</sup> There, the Federal Trade Commission imposed comparative advertising at the beginning of the 70s and research has been conducted ever since.<sup>9</sup> Nevertheless, results should not be applied to Germany for several reasons:

- First of all, the law concerning comparative advertising in Germany is far stricter than it is in the United States. A “comparative battle” such as the one between Pepsi-Cola and Coca-Cola in the USA<sup>10</sup> would not be possible in Germany.
- Secondly, comparative advertising is an innovation in Germany; consumers have no experience in dealing with this kind of advertisement. Hence, it is likely that they will react differently to consumers who are used to it.
- Last, but not least, several authors emphasize the cultural differences between these nations and argue that they also affect the perception of advertising.<sup>11</sup>

Tscheulin/Helmig give a comprehensive survey of the empirical studies that have been conducted.<sup>12</sup> One key result of their paper is that the results of such research are very contradictory. This has been confirmed by the small number of articles on this topic, published in Germany.<sup>13</sup> So we should be very cautious when employing any of those.

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<sup>7</sup> see Weißenberg (1999), p. 80.

<sup>8</sup> see Tscheulin/Helmig (1999).

<sup>9</sup> see Wilkie/Farris (1975), p. 8.

<sup>10</sup> see Bachmann (1998), p. 11.

<sup>11</sup> see e.g. van Huysse (1984).

<sup>12</sup> see Tscheulin/Helmig (1999).

<sup>13</sup> see Mayer/Siebeck (1997), p. 435ff.

The contradiction in results could be due to several methodological problems:<sup>14</sup>

- The different studies use different definitions of comparative advertising.
- Furthermore, different product categories; products having a different competitive position in the market; different types of media or different product attributes are analyzed. Moreover, advertising effectiveness is measured differently. Whilst this is truly appreciated by us, it restricts the comparability of studies significantly.
- A third point of criticism is that researchers frequently use self-made advertisements and featured products are often fictitious.<sup>15</sup>
- Validity of the studies is dubious, when researchers often use convenience samples taken from a student population, regardless of whether or not students are a target group for the product in question.<sup>16</sup>
- Only in a few studies (potential) product involvement is considered.<sup>17</sup> Mostly everyday goods are examined, whereas high involvement goods are not taken into consideration. However, the purchase of these goods usually involves a more intensive decision-making process, which might benefit from the additional information provided by comparative advertising.<sup>18</sup>
- In spite of the fact that comparative advertising is used to achieve an advantage with respect to a specific competitor<sup>19</sup>, researchers use absolute measurement items.<sup>20</sup> Several authors show<sup>21</sup> that the use of relative items, measures the effects of comparative advertising better than the use of absolute items.<sup>22</sup>

The enumerated facts may explain the contradictory results of published studies. As far as we know, there has not been a study that takes care of all the afore mentioned criteria simultaneously.

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<sup>14</sup> see Rennhak (2001), p. 102-106.

<sup>15</sup> see Rogers/Williams (1989), p. 26.

<sup>16</sup> see Muehling/Kangun (1985), p. 122.

<sup>17</sup> see Kearsley (1995), p. 107.

<sup>18</sup> see Mayer/Siebeck (1997), p. 436.

<sup>19</sup> Dhar et al. (1999), p. 293 and Nowilis/Simonson (1997), p. 205 show that preferences are depending on the compared alternatives.

<sup>20</sup> Schwaiger (1997), p. 195 denotes measuring absolute effects of advertising as dissatisfactory from a management point of view. It is rather interesting to know if communications measures were able to achieve relative advantages with respect to the competitors.

<sup>21</sup> see Grewal et al. (1997), p. 12; Miniard et al. (1998), p. 142.

The study described in the following is based on a model taking into account the German legal framework as well as the consumer's decision-making process when selecting a certain product among various alternatives<sup>23</sup>: Comparative advertising does not only have absolute effects on the product advertised, but also relative effects on the products used for comparison. Under German legislation, comparative advertising has to contain an objective comparison of the advertiser's and his competitor's product. Thus, comparative advertising in Germany will lead to cognitive rather than emotional processing. Hence, consumers' choice between product alternatives is based upon heuristics:<sup>24</sup> the evaluation of product attributes and the attitude towards the brand dominate the decision-making process. Evaluation of product attributes consists of two factors: the valuation of the different attributes of a certain product and their weight. So, the crucial questions at hand are

- whether or not comparative advertising in general, has a greater influence on the evaluation of product attributes, than non-comparative advertising and/or if the advertiser can change a consumers' subjective perception of the importance weights of these product attributes more effectively, by using comparative advertising and
- whether comparative advertising has a detrimental effect on a consumer's attitude towards the brand because of a negative attitude towards the advertisement<sup>25</sup> or if consumers enjoy the "new" copy form.

Cognitive attitude towards the brand is determined by the beliefs, i.e., the consumer's impressions about the product's characteristics.<sup>26</sup> Another factor that may affect the attitude towards the brand<sup>27</sup> is the attitude towards the advertisement.<sup>28</sup>

The content and the substantial design of a comparative advertisement have to remain within certain (narrow) limits due to German legislation. Hence, comparative advertis-

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<sup>22</sup> The degree of correspondence between encoding context during perception of the advertisement and the decoding context, that is offered to the recipient during the interview determines the precision, to which the effect measurement covers advertising effects Miniard et al. (1998, p. 142).

<sup>23</sup> see Rennhak (2001)

<sup>24</sup> see Bettman (1979) and Bettman et al. (1998).

<sup>25</sup> The argument for this assumption is based on the supposedly negative evaluation of a direct comparison in the sense of abatement and/or with the indecorousness of aggressive appearance.

<sup>26</sup> see Mitchell/Olson (1981), p. 324f.

<sup>27</sup> see MacKenzie/Lutz (1989), p. 55ff.; MacKenzie et al. (1986), p. 131.



ing with emotional aspects in the foreground would be licit only in exceptional cases. Consumers with greater involvement, could benefit from the more substantial information contained in that form of advertising. Although results of published studies are not unanimous<sup>29</sup>, we observe that the effects of comparative advertising depend on the level of involvement. Therefore, we also tested for effects of the involvement construct.

After selecting suitable print advertisements<sup>30</sup> we drew a quota sample; where „sex“ (40% female, 60% male) and „age“ (25% each in the groups 18-29 years, 30-39 years, 40-49 years und 50-65 years) served as quota variables. In total 551 probands were interviewed in the NFO test studios in Frankfurt am Main, Leipzig and Nuremberg.<sup>31</sup>

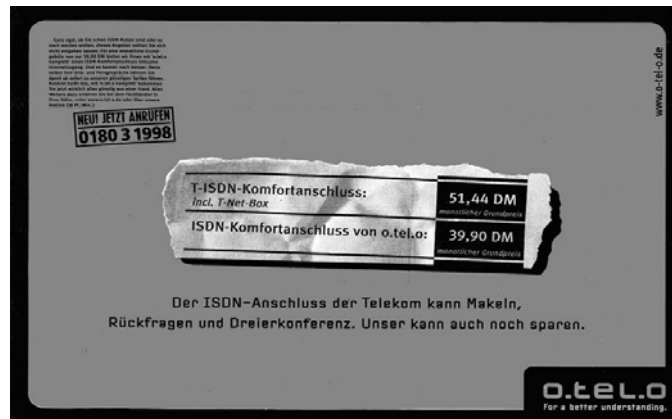


Exhibit 2: Comparative advertisement telecommunication

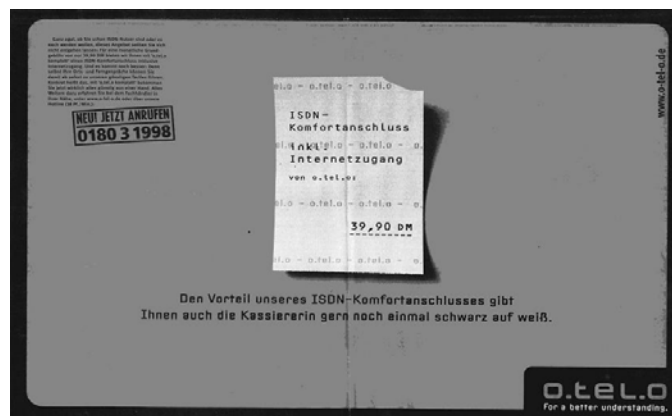


Exhibit 3: Non-comparative advertisement telecommunication

<sup>28</sup> The attitude towards the advertisement is defined as „affective reaction to an advertising stimulus“ (see Moore/Hutchinson, 1983, p. 526).

<sup>29</sup> see Tscheulin/Helmig 1999.

<sup>30</sup> See exhibits 1 to 4.

<sup>31</sup> Interviewees were selected by street recruitment.



Exhibit 4: Comparative advertisement automobile



Exhibit 5: Non-comparative advertisement automobile

The most important results were:

- Comparative advertising is in deed able to positively influence the evaluation of product attributes as well as the importance weights. These effects were stronger for the telecommunication examples tested than for the automotive examples. Reason for this could be that telecommunication services are selected for functional reasons and not for brand image like premium cars.
- When using a comparative format the attitude towards the brand is dominated by the evaluation of product attributes relative to the competitive offer as compared to the attitude towards the advertisement. This gives clear evidence for a much stronger cognitive processing of (informative) comparative advertisements as compared to non-comparative advertisements.

- As attitude towards a brand is quite stable in the course of time, comparative and non-comparative advertisements alike are not able to alter it with a one time exposure. Involvement plays a crucial role in the consumers' choice process and has a significant impact on the indicators of advertising effectiveness. Therefore, it needs to be taken into account when assessing advertising effectiveness.

We analyzed the effects of comparative versus non-comparative advertising based on a single contact with the advertisement. The main finding is that comparative advertising is superior to non-comparative advertising in one critical aspect: comparative advertising positively influences attitude towards the brand by shifting the perception of these product attributes that were used in the comparison. Halo effects or significant changes in the weights of attributes could not be proven. We would therefore recommend comparative advertising as suitable means of corporate communication, only for products that are bought because of specific functional attributes.

#### **4 Conclusion and Outlook**

As our survey of leading advertisers showed the ambiguity of the legal framework and the unresolved questions concerning its effectiveness are the main obstacles for the usage of comparative advertising in Germany. We analyzed the effects of comparative versus non-comparative advertising based on a single contact with the advertisement. The main finding is that comparative advertising is superior to non-comparative advertising, as comparative advertising positively shifts the perception of these product attributes that were used in the comparison. Hence, advertisers in Germany, at least in a short-term perspective, may not fear any „damage“ to their brands by using comparative advertising. Nevertheless, we could not consider changes in the brand image that may result from long-term use of comparative advertising in this study.

For further research on that topic in Germany we recommend the use a model that includes involvement of the consumer. Until now, comparative advertisements were placed e.g., by telecommunication providers and rental car agencies, which emphasized a price comparison. In Germany, that seems to be the „natural habitat“ of comparative advertising. As prices are not the major decision criterion in many product categories, we may face limited application possibilities for comparative advertising. However, one

could imagine comparing other functional attributes as well, for example technical innovations, whose communication via comparative advertising could provide additional opportunities for differentiation.

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