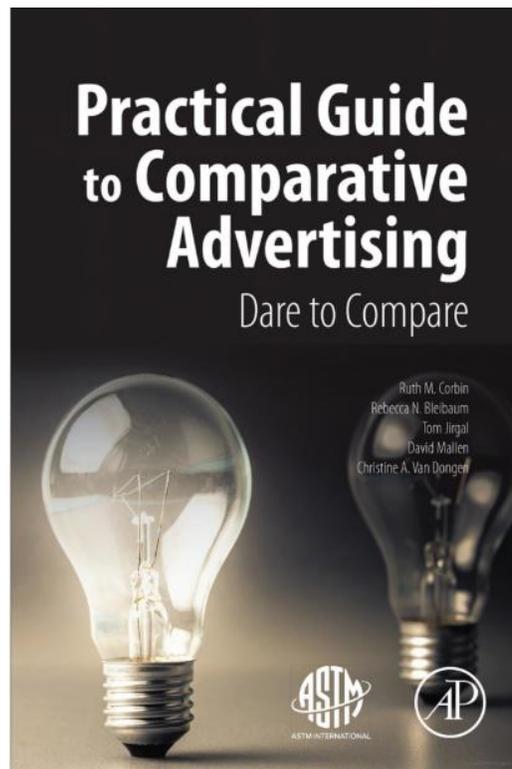


SUMMARY CHECKLIST FROM
PRACTICAL GUIDE TO COMPARATIVE ADVERTISING
-- DARE TO COMPARE --



Courtesy of:

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Dare to Compare - Summary Checklist

Practical Guide to Comparative Advertising - Dare to Compare is the first-of-its-kind international handbook for corporate marketers, advertising professionals, and the lawyers who advise them. Published as a joint venture of Elsevier Academic Press and international standards organization ASTM, the handbook results from collaboration among international experts in marketing, advertising law, cognitive science, statistics, and sensory perception research.

Following up on requests from a webinar held on March 19, 2020, this stand-alone booklet-extract from the text has been prepared with permission of the publishers. It recaps highlights from the full text, and assembles the “to do” lists from each chapter. The booklet is a training and memory aid for all topics to keep in mind under time pressure of a comparative advertising launch. It will also enable you to think fast when confronted by an offensive claim by one of your competitors.

References to Chapters refer back to detailed content in the published book. The book may be ordered direct from Elsevier Academic Press at <https://www.elsevier.com/books/practical-guide-to-comparative-advertising/corbin/978-0-12-805471-0>.

COMPARATIVE ADVERTISING: LOOK BEFORE YOU LEAP (*Chapter 1*)

The choice to be a “comparative advertiser” has implications much beyond the marketing department. Customer perception, employee morale, industry relationships, legal position, and financial risk / reward are all implicated in the choice. Once committed to a comparative campaign, a corporation will set itself on the trajectory of steps enumerated here:

- Be aware of legal and regulatory restrictions for what can be claimed in a comparative advertisement. [*See Chapter 2 checklist, Governing Laws, Network Standards, and Industry Self-Regulation*]
- Consider what claim of positioning against a competitor you want to make. The claim will likely complement the positioning you seek for your product or company overall. [*See Chapter 3 checklist, What’s the Name of the Claim, offering a catalog of claims from which to choose.*]
- Claims must be explicitly supported by evidence. Remember that you are responsible not only for the express claims but also for claims that may be implied to reasonable consumers. [*See Chapter 4 checklist, Foundations of Test Design, describing the criteria that your evidence must address to withstand scrutiny before a regulator or judge.*]
- Comparative claims inevitably involve quantitative words like “equal to,” “more”, “majority” or “most preferred.” Proving your claim will come down to statistics of some kind. How big does your statistic have to be to qualify? The answer is less obvious than you think. [*See Chapter 5 checklist, Statistical Support—How Much Is Enough?*]

- With the preparatory steps above, a company is ready to add the magic of a brilliantly designed advertisement. Once designed, a comparative advertisement needs to be fine-tuned. It may need, for example, qualifiers, explanatory notes, or disclaimers to avoid misleading its audience. It may need occasional tweaking to avoid obsolescence, particularly if your competitor makes changes to the very product being compared in your advertisement. *[See Chapter 6 checklist, Know Your Limits: Claims Have Boundaries, reminding you about the fine-tuning issues.]*
- Anticipate the unexpected. Even when everything looks fine to the corporate team, a final disaster check is in order before launch. *[See Chapter 7 checklist, An Ounce of Prevention: Troubleshoot Your Claim Before Launch, advising on those final steps to minimize the chance of a market fiasco.]*
- Comparative advertisements provoke competitors. Once the advertisement is launched, marketers and their legal advisors should reserve time and money for addressing a possible legal challenge by the targeted competitor. *[See Chapter 8 checklist, Into the Fray: Playing Defense, on how to prepare.]*
- What if your company is the targeted competitor, rather than the protagonist, in a comparative advertising campaign? *[See Chapter 9 checklist, Into the Fray: Playing Offense, providing advice on reacting to such a campaign.]*
- Corporations doing business in more than one country will find useful the international perspectives added. *[See Chapter 10 checklist, Vive la Difference— Adapting Comparative Advertising to Different Countries.]*
- Advertising through social media is subject to all of the same principles summarized above. However, it brings novel problems. Some of the problems to anticipate when including social media in your comparative advertising campaign are highlighted. *[See Chapter 11 checklist, Advertising Claims in Social Media.]*

LAWS, REGULATIONS, AND COMPLAINTS (Chapter 2)

Once a company sets out on a path of comparative advertising, it needs to give early attention to its obligations under applicable laws and regulations in its own country and in other countries in which it hopes to extend its campaign. Self-regulatory professional and industry organizations may add another layer of rules of conduct.

- Readers should compile the relevant (1) laws, (2) regulations, and (3) media rules for their own jurisdictions.
- From the early stages of formulating a comparative claim for future advertising, advertisers should obtain legal advice on the requirements to substantiate it and any precedents in law or regulation that should be taken into account.
- Even when rules are scrupulously followed, advertisers should anticipate competitive push-back in one form or another and have a plan—before the advertisement is launched—to respond accordingly.



- International advertisers need to revisit each of the summary steps above for each country in which they intend to extend their campaign. Ensuring locally relevant substantiation for a competitive claim will always be a good investment.

WHAT'S THE NAME OF CLAIM—A USEFUL CATALOG (*Chapter 3*)

The book's catalog of claims includes Pinnacle Number One Claims, General Superlative Claims, Targeted Superiority Claims, Explicit or Implied, Parity Claims, Customer Preference Claims, Testimonials, Sensory-based Claims, and Factual or Technical Claims. The list is subject to variations but is intended to give a structure for thinking about how your company wants to position or communicate its competitive strength.

- Decide on the competitive benefit you want to promote.
- Choose from among the options for expressing it. Choose one or more options for testing that you anticipate will be supported.
- Decide on whether you will identify a competitor by name or not.
- Seek valid and reliable evidence of the truth of the claim or claims being tested, evidence that could withstand scrutiny of an expert hired by your competitor, if an objection is later raised. The evidence should be tailored to the wording of the claim—as close to the “exact” wording as reasonable.

FOUNDATIONS OF TEST DESIGN (*Chapter 4*)

Decisions must be made and records should be kept for each of the following, where applicable:

- Decision on what specific claim is to be tested
- Choice of experimental design that serves the test of the claim, exactly as it is worded
- Methodology -- in-person (central location or at-home), telephone, or Internet
- Selection criteria of the target population
- Samples sizes for each subgroup relevant to the experimental design
- The process for recruitment, screening, and qualification
- Test locations and dates
- Questionnaire
- Data collection process
- For in-person testing, interview/test staff instructions, including instructions on product handling, preparation, and serving
- Product procurement and storage
- Product preparation protocols
- Participant instructions
- Coding instructions for open-ended responses
- Data tables
- Assembly of raw data in readable form
- Data analysis and covering report



STATISTICAL SUPPORT—HOW MUCH IS ENOUGH *(Chapter 5)*

The use of statistics removes ambiguity. Once the technical experts confirm the legitimacy of how statistics are used, based on sufficient sample sizes and quality controls, then statistical statements can be turned into readily understood consumer claims. Your readiness to incorporate the industry's major guidelines for support can be checked from the following list:

- Decide on the claim you want to make.
- Set up the wording for the hypotheses that will determine the test design.
- Get input at this stage from the advising lawyer, regarding any issues in principle with the wording of the claim. If issues arise, either modify the claim or ensure that the issues are covered off in the research design.
- Determine sample size, including subsample sizes, based on guidelines you will use as your authority.
- Recruit a sample using rigorous randomization methods and ensure that consumer qualifications are matched to the audience for the claim.
- Determine the quantum necessary for the claim to be supported.
- If support is obtained, assess every possible reason why an opponent might disagree. Decide on whether the risks are tolerable.
- Document definitions and assumptions, for production in the report.

CLAIMS HAVE BOUNDARIES. KNOW YOUR LIMITS *(Chapter 6)*

Even well-supported claims have their limits: limits on what can be said, what must be said, and how long the claim is available to be made. If a competitor acts quickly to modify its product, the investment in the advertising program may have limited time value. This should be anticipated for fast action if necessary. Sometimes, of course, a short window of time after a product is launched — even if the advertisement is ordered off the airwaves—is enough for a company to make the impact it needs.

- Ensure that the wording of the comparative claim matches the test that supports it and is not altered in nuance or implication by other content of the advertisement.
- Challenge, and test the impact, of any humor, hyperbole, or emotional appeals incorporated in the advertisement—any of which may be interpreted differently than the advertiser intends.
- Add disclaimers as required, following the four P's of Prominence, Presentation, Placement, and Proximity. Make sure the disclaimer is not adding information critical to understanding the meaning of the claim or information that alters the predictable interpretation of the claim.



- Timing of the advertising program may take its normal course, unless the competitor changes its product formulation. If the claim is no longer valid, a competitor will no doubt let you know. However, it may be prudent to monitor the truth of the assumptions about the competitor's product that underlie the claim, at scheduled dates throughout the planned life of the claim, so as not to leave the business scrambling to respond to an allegation of a false and misleading campaign.

AN OUNCE OF PREVENTION: TROUBLESHOOT YOUR CLAIM BEFORE LAUNCH (*Chapter 7*)

Keeping their eye on the upside benefits of comparative advertising, marketers may be inclined to let the lawyers worry about the risks. That would be a mistake. Every professional in the company who is part of a comparative advertisement development process has an opportunity to mitigate risk for the benefit of the company and its shareholders.

- Know the standards of laws and regulations for fair and truthful advertising in your country or local jurisdiction. Look for case studies that may provide guidance for your company's own ambitions.
- Assess your company's tolerance for taking risks and ability to withstand challenges.
- Form a realistic and prudent view of the required investment to take your claim to public advertising, including resources for defending the claim if it is later challenged. Calculate costs and rewards of mounting a comparative advertising claim and ensure that the financial analysis can support a business case for proceeding.
- Examine research-on-hand to generate comparative statements that have the best chance of being supported.
- Prepare objective defensible evidence to support the claim (or abandon plans if support is not forthcoming).
- Disaster-check the advertisement for unintended messages that consumers may infer.
- Negotiate with competitors who complain. Allow a complaint to proceed to litigation only if the company is ready for hostile scrutiny of sensitive information.
- Have an exit strategy as part of your overall contingency planning, well before the advertisement is launched.
- Use the resources available online via the government and national advertising/marketing regulators, and get the ASTM and the Television Networks claims guidelines as resources to educate yourself about claims substantiation research and processes. Go to conferences and workshops where claims substantiation is the topic.



INTO THE FRAY: PLAYING DEFENSE (Chapter 8)

Every comparative advertiser should be ready to be challenged. Potential challengers include competitors, government enforcement agencies, or large groups of consumers and the class action attorneys who represent them. Advertising that is particularly aggressive or disparaging of another company or product practically goads adverse scrutiny. In the era of rapid electronic communication, it takes only a few minutes for one of your competitor's executives, agency staff, or employees who see the campaign to fire off a copy to the corporate lawyers. In rapid succession may come a legal demand letter, an advertising regulator or network challenge, or even a lawsuit.

The consequences of a challenge can be quite dramatic, and also expensive. Television networks may pull an advertisement if they determine it contains an advertising claim that is not adequately substantiated. Additionally, a court can issue an injunction order for immediate removal if it determines that the advertisement is false and damaging to a competitor or is likely to be found so at a future trial. Investigations and lawsuits initiated by consumer protection agencies can give rise to significant financial liability either by way of a false advertising verdict or a settlement. Preparation to launch a comparative campaign should incorporate steps of preparation to defend, should a complaint later ensue.

- Evaluate at the outset whether the claim is one that is likely to be challenged by a competitor. Is the competitor litigious? Is the claim going to tout superiority as to a product attribute where the competitor claims to have an advantage? If the claim is likely to be controversial, plan for the worst.
- Make sure at the outset that there is qualified person (other than counsel) who can explain and defend the testing procedures if necessary.
- Make sure you have a reasonable and fair rationale for any key decisions that you make with respect to your test methodology—particularly if they deviate from standard practice.
- Make sure that your claim substantiation evidence addresses not only the express statements made in the advertising but also any claims that are reasonably implied.
- Be careful in what you say in writing. If you have concerns, pick up the phone to communicate them to other relevant members of your team.

INTO THE FRAY: PLAYING OFFENSE (Chapter 9)

Whether or not a corporation is inclined to comparative advertising itself, alert attention to competitive activity is an essential component of risk management.

- Put into place a corporate watch program, with specific attention to the consistency between words and visuals of advertisements in your corporate sector.
- On discovering an offending comparative advertisement, start by direct business communications to the advertiser.
- If the offending advertisement is televised, consider the pros and cons of an efficiently implemented complaint to the network.



- If more efficient options do not work, assess the trade-offs involved in an action through the regulator or courts. The first decision is whether the business is ready for a public confrontation. Budget required should be prudently estimated; action is frequently more costly than people expect.

VIVE LA DIFFÉRENCE—ADAPTING COMPARATIVE ADVERTISING TO DIFFERENT COUNTRIES

(Chapter 10)

- Famous brands maintain consistent positioning worldwide. The opportunity presents itself for an international company to communicate its desired competitive positioning in different countries. Deciding to take hold of that opportunity is a matter of top-level strategy for the company.
- Engage local legal counsel in each country where the campaign is planned to advise on local laws and regulations and to vet copy.
- Pretest advertisements in each country for cultural compatibility.
- Avoid disparagement anywhere. Notwithstanding inter country differences in nuances of permitted comparisons, almost all countries of interest to international advertisers prohibit disparagement of competitors' products.

SOCIAL MEDIA AND COMPARATIVE ADVERTISING *(Chapter 11)*

- As a matter of contemporary business strategy, every plan to launch a comparative advertising should consider an accompanying social media component.
- Stay alert to the risks of soliciting consumers to participate in online discussions of your product's superiority; such solicitation activities may be subject to regulations affecting comparative advertising through traditional media. Regulations concerning endorsements are also pertinent. The additional challenge for marketers is that there is little control over where consumers take the conversation on social media.
- Endorsers that are paid or otherwise associated by business interest to the advertiser must be disclosed.
- Administrators of advertising laws and regulations are continuing to be presented with novel cases that, in turn, are shaping the evolving law. Legal counsel should be consulted every time a new creative marketing idea is proposed for social media.

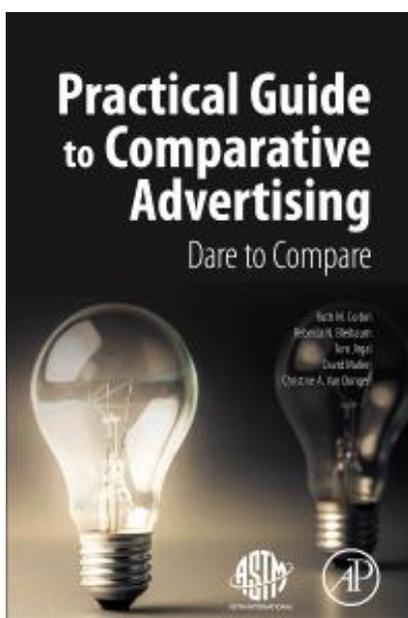


ABOUT CORBINPARTNERS INC.

CorbinPartners is an established provider of precise and reliable business intelligence and forensic market research. CorbinPartners' work products form part of essential due diligence for high-stakes business decisions, risk analysis, regulatory matters, negotiation and litigation.

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ABOUT THE TEXT



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DESCRIPTION

Practical Guide to Comparative Advertising: Dare to Compare is an authoritative, engaging handbook on comparative advertising for food and non-food consumer products. Claim substantiation is a common stakeholder interest among management, advertisers, lawyers and researchers. This handbook covers the corporate culture and strategic goals that encourage comparative advertising, laws and regulations, standards for research evidence, and examples that bring the concepts alive. Of particular value to corporate brand managers, the book includes a checklist of process steps and quality controls that allow managers to orchestrate comparative ad campaigns and manage the risk of complaints from indignant competitors.

KEY FEATURES

- Alerts research, development and marketing professionals to potential competition issues and legal concerns
- Provides a reference source for courts of law with respect to accepted industry standards and practices
- Presents an authoritative perspective, in plain language, on laws and regulations governing comparative advertising, and on worldwide standards governing research evidence in support of advertising claims
- Covers a wide range of consumer advertised products, including those with sensory-based advertising about taste, touch, and general impressions.

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