

## Chapter 24

# Advertising

## 1. General

The development of commerce new technologies, as well as the growing awareness regarding consumer protection has lead to the development of a modern legislation in advertising. The objective of the legislation in this field is product and services consumer protection, the protection of individuals who carry out production or commercial activities, provide services, practice various handcrafts or professions as well as the protection of the general public interest against misleading advertising, negative consequences of advertising and the comparative advertising.

Thus, in line with the European regulations in this field, domestic enactments have been passed, concerning, among others, forms of illegal advertising, legal regime of misleading and comparative advertising as well as special rules for the advertising of certain products.

Apart from the general regulation in this field, regulations concerning audio-visual advertising and teleshopping have been passed as well.

## 2. Main regulations

- Law No. 148/2000 regarding advertising, as further amended (“Advertising Law”);
- Audio-Visual Law No. 504/2002 (“Law No. 504/2002” as further amended);
- Law No. 457/2004 regarding advertising and sponsorship of tobacco products;
- Law No. 158/2008 regarding misleading and comparative advertising;
- National Audiovisual Council’s Decision No. 220/2011 regarding the code for regulating the audiovisual content.

## 3. Illegal advertising

According to article 6 of Law no. 148/2000, advertising is illegal if it is:

- (i) subliminal;
- (ii) offends human dignity and public morals;
- (iii) includes discrimination based on race, sex, language, origin, social origin, ethnic identity or nationality;

- (iv) infringes religious and political beliefs;
- (v) damages the image, honor, dignity and private life of individuals;
- (vi) exploits somebody's superstitions, credulity or fear;
- (vii) damages somebody's safety or determines to violence;
- (viii) encourages a behavior prejudicial to the environment;
- (ix) promotes the sale of products and services that are produced or distributed by breaching legal provisions.

#### **4. Regime of misleading and comparative advertising**

The Romanian laws expressly prohibit misleading and, in certain circumstances, comparative advertising put in place or carried on by a natural or legal person who acts as a trader on the market.

Misleading advertising is defined as any advertising which in any manner whatsoever deceives or is likely to deceive the persons to whom it is addressed or whom it ultimately reaches and which due to its deceptive nature is likely to affect the economic behavior of those persons or injures (either actually or potentially) a competitor.

In determining whether the advertising is misleading or not all aspects should be taken into account, especially those concerning:

- (i) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture of goods or provision of services, fitness for purpose, uses, quantity, technical specifications, geographical or commercial origin or the results to be expected from their use, or the results and key features of tests or checks carried out on the goods or services;
- (ii) the price or the manner in which the price is calculated, and the conditions under which the goods are supplied or the services provided;
- (iii) the nature, attributes and rights of the advertiser, such as its identity and assets, his qualifications and ownership of industrial property, commercial or intellectual property rights or his awards and distinctions.

As previously mentioned, the misleading advertising is expressly prohibited by law being subject to significant fines and additional effective remedies enforced by the competent authority, such as: compelling the trader to publish the minutes ascertaining the misdemeanor or the court judgment, either in full or in part, in a well known newspaper and make it public through the same mass media channels as those used for misleading advertising. Likewise, the trader will be compelled to publish a rectifying announcement stating

the trader's identification data, the misdemeanor committed, the date on which it was committed and the measures imposed.

By contrast, comparative advertising (i.e. advertising which explicitly or by implication identifies the goods/services of a competitor or the competitor itself) is allowed by law, in so far as the following cumulative conditions are met:

- (i) it is not misleading;
- (ii) it compares goods or services meeting the same needs or intended for the same purpose;
- (iii) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include the price;
- (iv) 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;
- (v) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or standing of a competitor;
- (vi) for products with designation of origin, it relates in each case to products with the same designation;
- (vii) 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;
- (viii) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

The authorities in charge of combating the misleading and unlawful comparative advertising are the Ministry of Economy and Finance and, as the case may be, the National Audiovisual Council of Romania. The complaint may be lodged with the competent authority by any interested party.

## **5. Special provisions regarding the advertising of certain products**

It is illegal to advertise for tobacco products:

- (i) in radio and television programs;
- (ii) on the first and last page or cover of mass media printed materials;
- (iii) on public transportation tickets.

It is illegal to use a symbol or a tobacco brand designation for promoting other products, save for those related to smoking, such as ashtrays, lighters, matches and the like.

The explicit advertising of alcoholic drinks is illegal:

- (i) on the first and last page or cover of mass media printed materials;
- (ii) on public transportation tickets.

It is also illegal to advertise for alcoholic and tobacco products in schools or hospitals or in premises closer than 200 m from their entrance, measured on the public road.

It is illegal to advertise for alcoholic and tobacco products in publications for minors, in theaters before, during and after shows for minors.

In addition, advertising for alcoholic drinks and tobacco products is illegal under the following circumstances:

- (i) targets minors;
- (ii) shows minors consuming such products;
- (iii) suggests that alcoholic drinks or tobacco products have therapeutic properties or have a stimulating or sedative effect or may solve personal problems;
- (iv) provides a negative image of abstinence;
- (v) emphasizes the alcohol content of alcoholic drinks with the purpose of stimulating consumption or establishes a connection between alcohol and car driving;
- (vi) does not contain warnings in Romanian language for tobacco products.

Advertising for narcotic and psychotropic substances is illegal.

Advertising for any kind of weapons, munitions, explosives, pyrotechnical methods and means, in other locations than authorized sale points, is prohibited, save for weapons for sports, hunting or collection purposes.

As regards products and services for minors, such advertisement is illegal if it:

- (i) contains detrimental elements that affect them physically, morally, intellectually or mentally;
- (ii) indirectly encourages children to buy products or services, by taking advantage of their lack of experience or their gullibility;
- (iii) affects the special relationships between minors and parents or teachers;
- (iv) shows in an unjustified manner minors in dangerous situations.

As for medical products, only advertising for products which may be sold without prescription is permitted. In these cases, advertising materials are to be approved by the National Medicines Agency.

## 6. Liabilities for infringement

Current regulations establish a joint liability of the advertisement author and the legal representative of the broadcasting media, with the person who uses such advertisement in breach of the legal provisions.

If the advertising user is not headquartered in Romania or cannot be identified, the liability is incumbent on, as the case may be, its legal representative within Romania, the author, the advertisement producer or the legal representative of the broadcasting channel.

The law stipulates the obligation of the advertisement user to prove the exactness of the statements, indications and presentations used. Such obligation consists in bringing, at the request of the competent State bodies, the documents supporting such exactness.

The law provides for fines between RON 500 and RON 4000, applicable to legal entities as well. In addition to such fines, the offender may also be imposed the following penalties/remedies:

- (i) advertisement prohibition, in case it has been broadcasted or will be broadcasted;
- (ii) advertisement suspension until its correction;
- (iii) partial or total publication of the competent State body decision;
- (iv) publication, on the offender's expense, of one or several rectifying announcements, whose content and broadcasting form are determined by the competent State bodies.

## 7. Advertising broadcasted by audio-visual channels or teleshopping

Advertising and teleshopping are to be broadcasted in lumps, must be easily identified by proper marking and must be separated from other programs by visual and audio signals.

Isolated advertising and teleshopping spots, other than those transmitted during sport broadcasts, may be used only in exceptional cases established by the National Audiovisual Council.

Subliminal techniques are prohibited in advertising and teleshopping. Moreover, hidden advertising and teleshopping as well as advertising in religious service broadcasts are prohibited.

Advertising, including auto-promoting advertising (spots in which TV channels promote their own broadcastings), and teleshopping, must observe, among others, the following conditions:

- (i) not to affect the physical, mental or moral profile of minors;
- (ii) not to offend human dignity;
- (iii) not to include any form of discrimination based on race, religion, nationality, sex or sexual orientation;

- (iv) not to stimulate indecent and immoral behavior;
- (v) not to encourage behaviors prejudicial to the environment;
- (vi) not to offend the viewers' and the radio listeners' religious and political beliefs;
- (vii) not to promote, directly or indirectly, occult practices.

Advertising and teleshopping for alcoholic beverages must observe, among others, the following conditions:

- (i) not to target minors or present minors consuming alcoholic beverages;
- (ii) not to establish any connection between alcohol consumption and any improvement in one's physical or psychical condition or driving abilities;
- (iii) not to encourage excessive alcohol drinking or to present in a negative manner the moderate consumption or the refraining from consumption of alcohol beverages;
- (iv) not to indicate as a quality the high alcohol content of beverages;
- (v) not to suggest that by alcohol consumption social or sexual performances may be obtained.

Between 6:00 and 22:00 any type of advertising for spirits is forbidden.

Advertising must not cause any moral, psychic or mental damage to minors, and especially:

- (i) not to directly determine minors to buy a product or service by taking advantage of their lack of experience or their gullibility;
- (ii) to refrain from unreasonably presenting minors in dangerous situations;
- (iii) not to directly encourage minors to convince their parents or other persons to buy the advertised goods or services.

In addition to the above-mentioned conditions, teleshopping must not incite minors to request the purchasing or renting of goods or services.

Regarding advertising and teleshopping of medical products, treatments and nutritional supplements, there are also several prohibitive legal provisions, some of which are presented below.

Advertising for medical products or treatments, for which medical prescription is required, is not permitted.

Advertising for medical products, medical treatments or nutritional supplements is not allowed during the broadcasting for minors or during the commercial breaks that precede or follow such broadcasting.

It is prohibited for advertising or teleshopping to contain therapeutic indications for affections such as:

- (i) tuberculosis;
- (ii) sexually transmitted diseases;
- (iii) other severe infectious disease;
- (iv) cancer and other tumor diseases;
- (v) chronic insomnia;
- (vi) diabetes and other metabolic diseases.