

## **ADVERTISING**

*The presentation hereby has in view the legal provisions in force on the 31<sup>st</sup> of March 2004*

### **Applicable legislation in this field**

- Government Emergency Ordinance no. 55/1999 on prohibition of the advertising the tobacco products in the theatres and the prohibition of the selling of the tobacco products to minors – republished in the Official Gazette no. 461/21<sup>st</sup> of September 2000, as further amended and completed by:
  - Law no. 125/2001 on amendment and completion of Art.1 from the Government Emergency Ordinance no. 55/1999 on prohibition of the advertising the tobacco products in the theatres and the prohibition of the selling of the tobacco products to minors, published in the Official Gazette no. 170/4<sup>th</sup> of April 2001
  - Law no. 255/2000, Official Gazette no. 629 from the 5<sup>th</sup> of December 2000 on amendment of paragraph 2 of Art. 2 from Government Emergency Ordinance no. 55/1999 on prohibition of the advertising the tobacco products in the theatres and the prohibition of the selling of the tobacco products to minors
  
- Law no. 151/2000 on the approval of the Government Emergency Ordinance no. 55/1999 on prohibition of the advertising tobacco products in theatres and the prohibition of selling tobacco products to minors, published in the Official Gazette no. 354/28<sup>th</sup> of July 2000
  
- Order of the Minister for Finance no. 519/1999 on the approval of the methodological norms for the enforcement of the Government Emergency Ordinance no. 55/1999 on prohibition of the advertising the tobacco products to minors, published in the Official Gazette no. 383/12<sup>th</sup> of August 1999
  
- Decision of the president of the National Audio-Visual Council no. 65/2000 on the adopting of the Compulsory norms for advertising, teleshopping and sponsorship in the audio-visual field, published in the Official Gazette no. 352/27<sup>th</sup> of July 2000 as amended and completed by the Decision no.19/2002 for the amendment and

- completion of the Decision of the president of the National Audio-Visual Council no. 65/2000 on the adopting of the Compulsory norms for advertising, teleshopping and sponsorship in the audio-visual field
- Law no. 148/2000 on advertising, published in the Official Gazette no. 359/2<sup>nd</sup> of August 2000 amended and completed by:
    - Law no. 283/2002 on the amendment of the Law no. 148/2000 on advertising, published in the Official Gazette no. 368/31<sup>st</sup> of May 2002
    - Government Ordinance no. 17/2003, for the amendment of Art. 8 (e) from the Law no. 148/2000 on advertising, published in the Official Gazette no. 64/2<sup>nd</sup> of February 2003
  - Order of the Minister for health no. 853/2000 on the establishing of the text and the sizes of the warning-inscriptions of the advertising forms on tobacco products, published in the Official Gazette no. 602/24<sup>th</sup> of November 2000
  - Order of the Minister for health and family no. 263/2003 for the approval of the Regulations on the authorization for the bringing on the market, supervision, advertising, labeling and prospect of the medicinal products for human use, published in the Official Gazette no. 336/19<sup>th</sup> of May 2003
  - Decision of the president of the National Audio-Visual Council no. 123/2003 on advertising and teleshopping, published in the Official Gazette no. 479/4<sup>th</sup> of July 2003 amended by the Decision of the president of the National Audio-Visual Council no. 17/2004

### ***I. Scope of the legal provisions on advertising***

The provisions of Law 148/2000, as further amended and completed, apply to the content of the advertising materials and advertising messages transmitted by those ones, no matter the means of communication that makes the transfer of information possible.

Legal provisions stipulated apply to natural or legal persons that may be author, advertisements producer, legal representative of the distribution means, the person whose products or services are advertised.

The purpose of establishing these legal norms is the protection of consumers of products and services, of the persons with an activity of production, trade, perform a service or practice a job or profession, as well as the protection of the general public interest against misleading advertising, of the negative consequences of advertising.

## ***II. Public authorities having duties in this field***

Public authorities with duties in this field are: the Ministry of Health, Consumer's Protection Office, Competition Office, National Audio-Visual Council.

## ***III. Prohibited advertising forms***

### **1. Misleading advertising**

Any advertisement which, in any way, including its way or presentation, misleads or may mislead any person to whom it addresses or who comes into contact with it and may affect the economic behavior, harming his interest as consumer or that may harm a competitor's interests is considered misleading advertising.

### **2. Comparative advertising**

Any advertising that explicitly or implicitly identifies a competitor or its goods or services offered is comparative advertising. This advertising form is allowed by the legal norm, submitted to certain restrictions.

Thus, the comparative advertising is prohibited if:

- The comparison is misleading, in the sense that it may mislead the person to whom it addresses or influences the economic behavior;
- It compares goods or services with different destinations or purposes;
- It does not compare objectively one or more essential, relevant, provable or representative features of goods and services;
- It generates confusion on the market between the advertiser and a competitor or between trade marks, commercial names or other distinctive signs, goods or services of the advertiser and those belonging to a competitor;
- It discredits or denigrates trade marks, commercial names, other distinctive signs, goods, services or other activities or situations of a competitor;
- It compares products with different indications, in the case of the products with geographical indication;

- It unfairly takes advantage of a trade mark reputation of its commercial name or other distinctive signs of a competitor or the geographical indication of a product of a competitor;
- It presents goods or services as imitations or copies of certain goods or services bearing a protected trade mark or commercial name;
- It violates any other provisions of the Competition Law no. 21/1996

## **Specification**

According to the legal provisions in force the advertising is prohibited which:

- a) is misleading;
- b) is subliminal;
- c) prejudices the respect for human dignity and public morality;
- d) includes discrimination based on racial, sexual, language, social origin, ethnic identity or nationality grounds;
- e) is offensive to religious or political beliefs;
- f) prejudices honor, dignity and persons' private life;
- g) uses superstitions, credulity or fear of persons;
- h) prejudices persons' security or encourages to violence;
- i) encourages a prejudicial behavior to the environment;
- j) stimulates trades of goods or services produced or distributed by violating the legal provisions.

## ***IV. Provisions regarding advertising of certain products and services***

### **1. Advertising for tobacco products and for alcoholic beverages**

According to Law no. 148/2000, as further amended and completed, the explicit advertising for tobacco products is prohibited:

- a) if broadcast in radio and television shows;
- b) if published in the written press, on the first and last page or on the cover;
- c) on travel tickets for public transportation.

In addition, any form of advertising of the tobacco products in theatres before and during the shows addressed to minors and also before and during the shows addressed to adults taking place between 5 a.m. – 8 a.m. is prohibited.

All advertising forms referring to the tobacco products must bear warning inscriptions in Romanian language. The text of the general warning

is: “Tobacco is severely harming for health”, accompanied above by the inscription: “Directive of the European Community Council 89/622/European Community Council.

Advertising for alcoholic beverages and tobacco products is prohibited:

- in public education institutes and in health institutes or at a distance less than 200 meters from the entrance thereof, measured on the public road;
- in publications addressed to minors mainly.

Explicit advertising for alcoholic beverages is prohibited:

- a) on the first and last page or cover of printed materials from the written press
- b) on travel tickets for public transportation

### **Distilled alcoholic beverages**

Any form of advertising for the distilled alcoholic beverages is prohibited in the services of sound radio broadcasting programs between the following hours:

- a) 6 a.m. – 8 a.m. and 10 a.m. – 10 p.m. Monday to Friday;
- b) 6 a.m. – 10 p.m. on Saturday and Sunday.

The advertising promoting distilled alcohol products shall end with the warning “Excessive consumption of alcohol is harming for health”.

## **2. Food products**

No qualities of prevention, treatment or curing of diseases shall be attributed to food products and no references to such properties shall be made; mineral natural waters used as medicines or for curative purposes in health resorts are excluded from such interdiction.

Illustrating with fruits and/or vegetal parts is not allowed, excepting the situation in which fruits (or parts of fruits – fruit juice, fruit pulp) and/or vegetal parts are inscribed on the product’s label and are found in its content in a proportion of minimum 4%. If for the production of food products, only flavors are used, the illustrating, drawing or any other forms of representation of fruits and/or vegetal products are prohibited.

## **3. Weapons, ammunition, explosives**

The advertising, in other places than those in which they are merchandised, for any kind of weapons, ammunitions, explosives,

pyrotechnic means and methods, except for weapons used for hunt or sports and panoply weapons is prohibited.

#### **4. Narcotic and psychotropic substances**

Advertising narcotic and psychotropic substances is prohibited.

#### **5. Medicinal products**

Advertising for medicinal products is allowed only for those products that can be issued without prescription. The advertisement shall warn the public if the products issued without prescription contain substances that can be harming for health.

Advertising for medicinal products containing narcotic and psychotropic substances is prohibited, for the meaning of international conventions.

Advertising for medicinal products should encourage their rational use, present them objectively, without exaggerating their therapeutic qualities.

The presentation, recommendation of the medicinal products, vitamins, food supplements, nutrients, nutrient supplements and medical treatments by public life, cultural, scientific or sportive well-known persons is not allowed.

#### **6. Products addressed to minors**

The advertising for products and services especially addressed to minors is prohibited in case:

- it contains elements which may harm them physically, morally, intellectually or psychically;
- it indirectly encourages children to buy products or services by taking advantage of their lack of experience or their gullibility;
- it affects the special relations existing between minors on the one hand and parents or children on the other hand;
- it presents minors in dangerous situations, without justified reason.

#### **7. Following of certain professions**

The advertising for:

- notary offices and any for of following the profession of lawyer;
- promoting of executors and judicial experts;
- private medical cabinets

is prohibited.

## ***V. Penalties for violating the legal provisions in the field of advertising***

The violation of legal provisions in the field of advertising is sanctioned according to the provisions of Law no. 148/2000, as further amended and completed.

The breaching of obligations due in the field of advertising:

- weapons, ammunitions, explosives,
- products or services addressed to minors,
- medicinal products issued without medical prescription,

are contraventions, if they were not made in such a way in which, according to the criminal law, to be considered offences and are sanctioned with a fine from ROL 5 million to ROL 15 million.

The breaching of legal provisions on the prohibited advertising forms, of the obligations due in the field of advertising tobacco products, alcoholic beverages, narcotic and psychotropic substances are contraventions, if they were not made in such a way in which, according to the criminal law, to be considered offences and are sanctioned with a fine from ROL 15 million to ROL 40 million.

The penalties stipulated may apply to legal persons too.

The stipulated contraventions are established and sanctioned at the complaint of the prejudiced persons or consumers' associations or ex officio according to the deed by the empowered representatives of the Consumers' Protection Office, empowered representatives of the local public administration, empowered representatives of the Competition Council empowered representatives of the Ministry of Health, empowered representatives of the National Audio-Visual Council.

The stipulated institutions and authorities may order, at the same time with the enforcement of the contravention sanction, the following measures, as the case may be:

- a) prevention of the advertising in case it was already broadcast or its broadcasting is imminent;
- b) the ending of the advertisement until its remediation;
- c) the publication of the public authority's decision, totally or partially and the establishing of the way of application of such decision;

- d) the publication, on the contravener's expense, of one or many rectifying advertisements, by establishing their content and broadcasting way.