

Act LVIII of 1997 on Business Advertising Activity (Extract)

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In order to ensure the protection of consumer interests and sustain market competition which serves economic efficiency and social welfare, while recognising the importance of professional self-regulation, the Parliament hereby passes the following Act to regulate business advertising activity for the purposes of achieving fair communication with consumers, protecting the interests of enterprises, observing the requirements of fair business practices, and facilitating the sale of goods and services.

General Advertising Prohibitions and Restrictions ➔

4. §

Advertising may not be published if

- a. it infringes on personal rights, respect for the deceased or rights related to the protection of personal data,
- b. it encourages violence or any behaviour that jeopardises personal or public safety, the environment or nature,
- c. it generates a sense of fear.

5. §

1. Advertising targeted at children or juveniles may not be published in if
 - a. it may harm their physical, intellectual or moral development,
 - b. taking advantage of their credulousness or lack of experience, it directly encourages them to motivate adults to purchase goods.
2. Advertising may not be published if it may harm the physical, intellectual or moral development of children or juveniles, including in particular advertising which shows children or juveniles in dangerous or violent situations or in situations with sexual emphasis.

5/A. §

1. Any display of a pornographic advertisement is forbidden, with the exception of such a display on sexual goods and in sex shops. Sex goods and sex shop are defined in a separate legal regulation.

2. For the purposes of Subsection (1) above, "pornographic advertisement" shall mean any display of sexuality in a gravely indecent manner, in particular, the open display of sexual intercourse or genitals.
3. It is forbidden to publish advertisements for sexual services, with the exception of such advertisement on sexual goods and in sex shops. For the purposes of this Subsection, "advertisement for sexual services" shall mean any announcement that is aimed to promote, directly or indirectly, a sexual service. The definition of sexual services, and additional restrictions pertaining to the advertisement of such services, are laid down in a separate legal regulation.
4. It is forbidden to publish any advertisement that is aimed to arouse sexual interest, with the exception of such advertisement on sexual goods and in sex shops.
5. It is forbidden to publish any advertisement for special-rate telecommunications services that is aimed to arouse sexual interest, with the exception of such advertisement on sexual goods and in sex shops.

6. §

1. Covert or subliminal advertising may not be published.
2. Advertising is prohibited for goods whose production or marketing is illegal.
3. Advertising may not be published if it contains a promise of tax exemption, tax allowance or the use of other tax advantage in place of or disproportionate to an actual service, or is otherwise misleading in respect of the tax advantage actually available.
4. Advertising which does not contain all costs incurred in relation to the disbursement of consumer loans may not be published.

7. §

1. It is forbidden to publish misleading advertisements.
2. For the purpose of defining a misleading advertisement, the information conveyed in the advertisement, which pertains to
 - a. the general characteristics of the merchandise,
 - b. the price of the merchandise or to the pricing method, and to other contractual conditions of purchase,
 - c. the disposition of the advertiser, such as its characteristics, the rights, wealth and/or endowments of or the awards received by the advertiser shall be taken into consideration.
- 3.

In the context of Paragraph a) of Subsection (2), information pertaining to the general characteristics of the merchandise shall be understood as any facts conveyed concerning the place of origin of the merchandise, its ingredients, safety factors, its impact on health, technical features, its environmental features and energy consumption, furthermore, its availability, date of manufacture, quantity, its suitability for a given function, the expected results from its use, the way it is controlled or tested, and any other fact regarding the application, shipping, use and maintenance of the merchandise.

7/A.§

1. Comparative advertising may be published if it satisfies the conditions set forth in Subsections (2) and (3) below.
2. Comparative advertising
 - a. cannot be misleading,
 - b. must not injure the reputation of another company or the name, merchandise, brand name and other marking of such company,
 - c. must not produce confusion between the advertiser and another company or the name, merchandise, brand name and other marking of such company,
 - d. must not produce any unfair advantage derived from the reputation of another company or the name, merchandise, brand name and other marking of such company,
 - e. must not violate the provision of Section 6 of Act LVII of 1996 on the Prohibition of Unfair or Restrictive Market Practices (hereinafter referred to as "UMPA") on the prohibition of imitating the merchandise of another company or the characteristics of such merchandise.
3. Comparative advertising
 - a. shall be allowed to compare only goods which are similar in terms of purpose and function,
 - b. must objectively compare one or more features of the goods in question which are definitive and typical, and which can be confirmed,
 - c. must objectively exhibit the prices, when applicable,
 - d. shall pertain to goods of the same origin, when applicable.
4. In respect of legitimate comparative advertising the holder of a trademark shall not contest the use of his trademark in the comparative advertisement on the basis of exclusivity, if such use is appropriate, if it is essential for the purpose of comparison and if not used excessively.

5. The findings of a comparative study prepared by a third party may be published or referred to in advertising only with the express prior consent of the party responsible for such study.

7/B.§

An advertisement containing a special offer, including special price offers, can be published if it clearly and plainly states the product to which it pertains, as well as the period or duration for which it is offered, or that it is offered for a product from a specific date as long as such product is available.

7/C.§

It is forbidden to publish any advertisement that contains a comparison

- a. with a fictitious product or company,
- b. with a product that is not available in commercial circles,
- c. with a product or company that cannot be clearly identified,
- d. with a product or company not of similar nature, whereby to purport or pretend a true option.

Advertising Control Proceedings ➔

15.§

1. The Bureau of Consumer Affairs - and the county-level consumer protection inspectorates (or of the Capital) in the first instance - shall provide for the observance of the provisions relating to business advertising activity; and within this framework, shall undertake proceedings against any violation of such provisions.
2. Any advertisement that violates the provisions of Section 7 and Section 7/A of this Act shall be under the jurisdiction of the court as defined in UMPA, or the Hungarian competition authority, with the understanding that the violations defined under Paragraphs b)-e) of Subsection (2) of Section 7/A and under Paragraph a) of Subsection (2) of Section 7/A shall be handled by the court, and by the Hungarian competition authority, respectively. The Hungarian competition authority shall have powers to establish whether the requirements set forth in Subsection (3) of Section 7/A are satisfied. The court shall also have jurisdiction if such matter arises as part of a case that is otherwise under its jurisdiction.
3. Proceedings in accordance with this Act shall not preclude the possibility that the party injured, in case his personal rights are infringed upon, may enforce his claim directly before court in accordance with the general rules of civil law. Should the amount of the possible indemnification under the rules of civil liability not be commensurate with the severity of the misconduct, the court may also impose a penalty to be devoted to public purposes.

16.§

1. Advertising control proceedings may be initiated upon application or ex officio.
2. Advertising control proceedings shall be initiated upon application in the event that a person's right or rightful interest is injured by a violation of any provision relating to commercial advertising activity. If the aggrieved consumer cannot be identified, or if enforcement of the claims is not expedient considering the number of consumers injured, administrative agencies or non-governmental organizations providing for consumer interests shall also be entitled to initiate proceedings. In the event of any violation of the provisions of Section 5/A, the advertising control proceeding must be conducted if initiated by the police.
3. In advertising control proceedings non-governmental consumer protection organisations shall be entitled to the legal status of their clients, with the exception of the proceedings defined in Subsection (2) of Section 17.
4. Advertising control proceedings may not be initiated after a period of one year following the publication of the advertising infringing on the provisions relating to business advertising activity. Should the party concerned learn of the infringement of his personal rights after a period of one year, the provision set forth in Subsection (2) of Section 326 of Act IV of 1959 on the Civil Code of the Republic of Hungary shall apply accordingly to establish the deadline for initiating the proceedings.

17.§

1. In the course of the proceedings of the Bureau of Consumer Affairs or the consumer protection inspectorates, the provisions of Act IV of 1957 on the General Rules of Administrative Proceedings shall apply, with due consideration to the departures therefrom contained in Sections 18-19. of this Act.
2. If the Hungarian competition authority proceeds on the basis of Subsection (2) of Section 15, the provisions of UMPA shall apply for such proceedings, with the deviations contained in Subsection (3), in Subsection (2) of Section 19 and in Section 19/A. The provisions set forth in Subsection (3), in Subsection (2) of Section 19 and in Section 19/A shall apply in court proceedings of cases in connection with comparative advertising.
3. If justified, the advertiser may be compelled - with due observation of the applicable circumstances and the legitimate interest of the advertiser and other concerned parties - to supply evidence in support of any facts stated in its advertisement.

18.§

1. If the body responsible for the proceedings establishes that the advertising violates the law,
 - a. it may order that such violation be terminated,
 - b. it may prohibit continuation of the violation.

2. The body responsible for the proceedings may impose a penalty on the party violating the law. In the event of repeated violations of the law, cumulative penalties may also be imposed.
3. The amount of the penalty shall be established with respect to all circumstances of the case, including, in particular, the scope and severity of the offence against consumer interests, the duration of the violation of law, and any repeated violating conduct. Any penalties imposed on the basis of a final legal judgement and not paid shall be collected in the same way as taxes.
4. Any penalties imposed against broadcasting service providers shall be paid to the Broadcasting Fund. In all other cases, penalties shall be paid to the credit of the bank account of the Bureau of Consumer Affairs.

19.§

1. The acting agency shall issue a temporary injunction prohibiting any further continuation of the unlawful conduct or shall order in such injunction that the unlawful situation be terminated, if such action is urgently necessary for the protection of the legal or economic interests of the parties concerned.
2. The acting agency shall resolve the subject matter of the aforementioned temporary injunction without delay.
3. The director of the Bureau of Consumer Affairs may order the consumer protection agency to issue said temporary injunction.

19/A.§

The acting agency shall prohibit publication of an advertisement not yet published, if it deems that publication of such advertisement is likely to violate the relevant provision on commercial advertising. No penalty shall be imposed simultaneously with a ban of publication.

20.§

1. Appeals lodged against the judgement of the consumer protection inspectorates in the first instance shall be judged by the director of the Bureau of Consumer Affairs. The director of the Bureau of Consumer Affairs may order that such judgement be executed with immediate effect.
2. An action can be brought before court to review the judgement of the director of the Bureau of Consumer Affairs. In the course of the court proceedings initiated on the basis of such action at law, the provisions contained in Chapter XX of Act III of 1952 on Civil Procedure shall apply. The court may reverse the judgement made by the director of the Bureau of Consumer Affairs.