

Legislative Decree no. 74 of January 25th, 1992

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(as amended by Legislative Decree no. 67 of 25 february 2000 and by Law No. 49 of April 6th, 2005)

Enactment of directive 84/450/EEC as amended by directive 97/55/EC concerning misleading and comparative advertising

Section 1. Purpose ➔

1. The purpose of this decree is to protect persons involved in commercial, industrial, craft or professional activities, consumers, and the public interest in general in being able to benefit from advertising, against misleading advertising and its unfair consequences, and to lay down conditions under which comparative advertising is lawful.

2. Advertising must be clear, truthful and fair.

Section 2. Definitions ➔

1. For the purposes of this decree:

- a. 'advertising' shall mean any form of message which is disseminated in any form or manner in the course of commercial, industrial, craft or professional activities to promote the sale of movable or immovable property, or to transfer rights and obligations in respect of such property, or to provide services;
- b. 'misleading advertising' shall mean any advertisement which, in any way whatsoever, including its presentation, misleads or is likely to mislead any natural or legal person to which it is directed or which it reaches, and which by virtue of being misleading is capable of adversely affecting their economic behaviour or, for this same reason, harms or may harm a competitor;

b-bis) 'comparative advertising' shall mean any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor;

- c. 'advertiser' shall mean any party which commissions an advertisement and the author of that advertisement and, in the event that it is not possible to identify either, the proprietor of the medium through which the advertisement is disseminated.

Section 3. Assessment criteria ➔

1. In order to ascertain whether an advertisement is misleading all the elements must be considered, and in particular in terms of the following:

- a. the characteristics of the goods or services, such as their availability, nature, operation, composition, the method and the date of manufacture or the date of the provision of the service, its fitness for use, quantity, description, geographical or commercial origin, or the results that may be obtained by its use, or the results and the fundamental features of any tests or controls carried out on the goods or services;
- b. the price and the manner of calculating the price, and the conditions under which the goods or services are supplied;
- c. the category, identification and rights of the advertiser such as the name, assets, skills, intellectual or industrial property rights, and any other legal rights over intangible assets of the company, awards or honours claimed by the company.

Section 3-bis. Conditions under which comparative advertising is permitted ➔

1. Comparative advertising is permitted if the following conditions are met:

- a. it is not misleading as defined by this decree;
- b. it compares goods or services meeting the same needs or intended for the same purpose;
- c. it objectively compares one or more material, relevant, verifiable and representative features of those goods or services, which may include price;
- d. it does not create confusion in the market place between the advertiser and a competitor, or between trade marks, trade names or other distinguishing signs, goods or services of the advertiser and those of a competitor;
- e. it does not discredit or denigrate the trade marks, trade names or other distinguishing signs, goods, services or activities or circumstances of a competitor;
- f. for products with designation of origin, it relates in all instances to products with the same designation;

- g. it does not take unfair advantage of the good reputation of a trade mark, trade name or other distinctive sign of a competitor or of the designation of origin of competing products;
- h. it does not present goods or services as imitations or replicas of goods or services bearing a designation of origin or a protected trade mark or trade name.

2. The requirement of verifiability referred to in subsection (1)(c) shall be met when the data given to illustrate the features of the goods or services advertised can be demonstrated.

3. Any comparison referring to a special offer shall indicate in a clear and unequivocal way the date on which the offer ends and, where the special offer has not yet begun, the date of the start of the period during which the special price or other specific conditions shall apply

or, where appropriate, that the special offer is subject to the availability of the goods and services.

Section 4. Transparency of advertisements ➔

1. Advertisements must be clearly recognizable as such; in particular, print advertisements must be distinguishable from other forms of non advertising communications through the use of graphical elements which are of immediate recognition.

2. The term "guarantee", "guaranteed", as well as any other similar terms can be used only if accompanied by affirmative claims regarding the content and the terms of the guarantee being offered. Whenever the brevity of the advertisement does not allow for the inclusion of these terms, the advertiser must complement a summarized version of the terms with a specific referral to a text that is easily accessible to consumers in which the full text version is contained. 3. All forms of subliminal advertisements are prohibited.

Section 5. Advertisements for products harmful to health and consumer safety ➔

1. Advertisements for products that are likely to endanger consumer health and safety are deemed to be misleading when they fail to indicate this such that consumers may be induced to act without taking normal precautions or safety rules.

Section 6. Children and adolescents ➔

1. An advertisement that is likely to reach children and adolescents is deemed misleading if it directly or indirectly constitutes a safety haphazard or takes advantage of their natural trustworthiness and lack of experience. An advertisement is also considered to be misleading if, by utilizing children or adolescents, it takes advantage of the natural feelings that adults have for the young.

Section 7. Administrative and judicial remedies ➔

1. The Competition Authority which was established by section 10 of Law no. 287 of 10 October 1990 exercises the powers governed by this section.

2. Competitors, consumers, their organizations and associations, the Minister of Trade and Industry, and any other government department or agency which is an interested party by virtue of their institutional duties, may, also acting on a complaint from the public, request the Authority to prohibit any misleading advertising or comparative advertising deemed to be unlawful under the terms of this decree, and order its suspension and the removal of its effects.

3. The Authority may issue a reasoned order provisionally suspending the misleading or comparative advertising deemed to be unlawful, in cases of particular urgency. In every instance it shall notify the advertiser that an investigation has commenced and if the principal commissioning the advertisement is unknown, it may request the owner of the medium through which the advertisement is disseminated to supply all the information needed to identify the principal.

The Authority may also request the advertiser or the proprietor of the medium through which the advertisement is disseminated to provide a copy of the advertisement deemed misleading or unlawful, and in the event of non-compliance, may use the powers vested in it by section 14 (2)(3) and (4) of Law no. 287 of 10 October 1990.

4. The Authority may require the advertiser to furnish evidence as to the accuracy of factual claims in an advertisement if, taking into account the legitimate interest of the advertiser and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case. If this evidence is not given or is deemed inadequate, the factual data shall be considered false.

5. When an advertisement has been or is to be disseminated through periodicals or daily newspapers, or by radio or television or by any telecommunications medium, before issuing any measure, the Competition Authority shall seek the opinion of the Autorità per le garanzie nelle comunicazioni (the national regulator for communications).

6. In its rulings the Authority must give full reasons, and its decision is final. If it rules that an advertisement is misleading or that the comparative advertisement is unlawful, it shall rule in favour of the complainant and prohibit any advertising that has not yet been made public or shall order any advertising that has already begun to be suspended. When the Authority upholds a complaint, it may order its ruling to be published, wholly or in part, as well as a public notice correcting the misleading information so that the misleading advertising or the unlawful comparative advertisement will not continue to produce any effects.

6-bis. In its decision upholding a complaint, the Authority shall also impose and administrative fine of between 1,000 euros and 100,000 euros, to take account of the seriousness and the duration of the offence. For the cases of misleading advertising provided by sections 5 and 6, the minimum fine shall be 25,000 euros.

7. In the case of advertisements incorporated into the packaging of products, when the Authority issues the measures referred to in subsections (3) and (5) above, it shall set a deadline for compliance taking account of the time materially required to comply.

8. The procedures for investigation shall be set forth in a regulation issued pursuant to section 17(1) of Law no. 400 of 23 August 1988 in order to guarantee both parties a fair hearing and full access to the case papers and for transcript to be made of the hearings[Presidential Decree no. 627 of 10 October 1996, Official Gazette no. 293 of 14

December 1996].

9. Any advertiser failing to comply with the emergency measures or with the order to refrain from advertising or to remove the effects of unlawful advertising shall be liable to an administrative fine of between 10,000 euros and 50,000 euros. In the event of repeated non-compliance, the Authority may order the company to suspend its business for a period of up to 30 days..

10. The Authority shall impose an administrative fine of between 2,000 euros and 20,000 euros on the proprietor of the medium used to disseminate the advertisement in the event of failure to provide the information or the documentation referred to in subsection (3). Should any information or documentation supplied prove to be untruthful the Authority shall impose an administrative fine of between 4,000 euros and 40,000 euros.

11. Where relevant, the provisions of Chapter I, Part I, and sections 26, 27, 28 and 29 of Law no. 689 of 24 November 1981, as subsequently amended, shall apply in respect of the administrative fines imposed for offences against this Decree. The administrative sanctions provided by this section shall be paid within 30 days of service of notice.

12. Where advertisements have been approved by an administrative procedure which was also intended to ascertain that it was not misleading or that the comparative advertisement was lawful, it is only possible to protect competitors, consumers and their associations and organizations through the administrative courts by way of a complaint against such an administrative measure.

13. The ordinary courts of law shall at all times retain jurisdiction over matters of unfair competition pursuant to article 2598 of the Civil Code and, as far as comparative advertising is concerned, in relation to acts performed in violation of copyright protected by Law no. 633 of 22 April 1941 as subsequently amended, and violations of company names protected by Royal Decree no. 929 of 21 June 1942, as subsequently amended, and violations of designations of origin which are recognized and protected in Italy and of any other distinctive trademarks, or marks of goods and services belonging to the competitors.

14. In order to protect the collective interest of consumers and users which are governed by this decree, section 3 of Law no. 281 of 30 July 1998 shall apply.

15. In order to permit the powers governed by this article to be fully exercised, the staff of the Competition Authority as defined by section 11(1) of law no. 287 of 10 October 1990 shall be increased by 10 persons for the year 2000, 5 in the year 2001 and a further 5 in the year 2002.

Section 8. Self-regulation ➔

1. The interested parties may request the prohibition of continued misleading advertising or comparative advertising deemed to be unlawful by appealing to the self-regulatory voluntary bodies established for the purpose.

2. Once a case has been filed with a self-regulatory body, the parties may agree not to apply to the Authority until a final decision has been issued.

3. In the event that a complaint has already been filed with the Authority or is filed subsequently by another lawfully entitled party, all the interested parties may request the Authority to suspend its proceedings until the self-regulatory body has issued its ruling.

Having examined all these circumstances, the Authority may order the proceedings to be suspended for not more than thirty days.

Section 9. Effectiveness ➔

1. This decree, bearing the Seal of State, shall be placed on the Statute Book of the Italian Republic. Everyone is required to comply with and enforce it.