

## ***Presidential Decree Nº 284, Procedure regulations on cases of Competition Authority on misleading advertising***

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Official Gazette no. 247 of 23 October 2003.

Presidential Decree No. 284 of 11 July 2003

Regulation containing provisions governing investigations of misleading and comparative advertising by the Competition Authority

### **Section 1. Definitions** ➔

1. For the purposes of this regulation:

- a. 'the Legislative Decree' shall mean Legislative Decree No. 74 of 25 January 1992;
- b. 'the Authority' shall mean the Competition Authority pursuant to Section 10 of law No. 287 of 10 October 1990.

### **Section 2. Request for action by the Authority** ➔

1. Competitors, consumers and their associations and organizations, the Minister of Productive Activities and any other government department affected in relation to their

legitimate institutional interests, that intend to request action to be taken by the Authority to prevent misleading or unlawful comparative advertising from taking place or continuing or to remove their effects, shall submit a written request to this effect to the Authority. The request, which must be signed, shall contain:

- a. the name, surname, company name and style, residence, domicile or place of abode of the complainant;
- b. information to identify the advertisement subject to complaint, such as:
  1. a sample or photocopy of the message if the advertisement is disseminated in the press, or on printed media in general, complete with all the details needed to identify the medium and the date of dissemination;
  2. a copy of the website pages on which the advertisement was disseminated, together with the indication of the website address, and the day and time it was seen posted;
  3. a detailed account of the telephone conversation, if the advertisement was received by telephone, indicating where possible the place, the day and the time of the telephone call, together with the telephone number to which the phone call was made;
  4. a photographic reproduction of the advertisement indicating the place and the date on which it was taken, if the advertisement has been disseminated by a poster;
  5. the name of the broadcaster, the area of the broadcast, the day and the time of the broadcast, in the event that the advertisement was broadcast by radio or television;
  6. the name of the shop or the chain of commercial outlets in which the advertisement was made, in the event that the advertisement is disseminated in several sales outlets;
  7. any other information required to be able to identify at least one retail outlet in which the product is on sale in the event that the advertising is exclusively disseminated through the packaging or labeling of the product.
- c. an indication of the alleged misleading nature of the advertisement or unlawfulness of the comparative advertisement;
- d. an indication of the elements demonstrating the right of the complainant to request action by the Authority.

2. The request submitted by the Ministry of Productive Activities pursuant to Section 7(2) of the Legislative Decree shall contain the information referred to in subsection (1)(b) and (c) above, while applications submitted by any other public administrations shall also contain the elements referred to in subsection(1)(d) above.

### **Section 3. The office and person responsible for the proceedings** ➔

1. The office responsible for the proceedings shall be the competent organizational unit instituted pursuant to Section 10(6) of law No. 287 of 10 October 1990.
2. The official responsible for the proceedings shall be the manager responsible for the unit referred to in subsection (1) or another official appointed by him.
3. The person responsible for the proceedings shall conduct the investigations.

### **Section 4. Commencement of proceedings** ➔

1. The official responsible for the proceedings shall serve notice of the commencement of the proceedings, pursuant to Section 7(3) of the Legislative Decree, on the advertisers and, if known, on its author, and also on the complainant. When the advertiser principal is not known, the official responsible for the proceedings shall give the proprietor of the medium used to disseminate the advertisement, or any other informed party, either public or private, a deadline by which to furnish the information needed to identify the advertiser.
2. If the complaint is irregular or incomplete the official responsible for the proceedings shall notify the complainant thereof within seven working days of the receipt of the request for action, indicating the reasons for the irregularity or incompleteness, and set a deadline by which the request for action is to be regularized or completed.
3. In the cases referred to in Section 2(1)(b), numbers (5), (6) and (7), if the advertisement is not available, the case officer must make every effort to acquire a copy within seven working days after receipt of the full and regular request.
4. In the notice referred to in subsection (1), the subject matter of the proceedings shall be identified, together with the date set for its conclusion, and the office and the name of the official responsible, the office to which access to the documentation is available, the possibility of submitting written memoranda or documents, and the deadline by which the memoranda and documents are to be submitted, shall be indicated.
5. When the request for action referred to in Section 2 is manifestly groundless or inadmissible because the complainant is not authorized to submit it or in the event that the deadline referred to in subsection (2) above is exceeded, the Authority shall dismiss the case and notify the requesting party thereof.

### **Section 5. Terms of the proceedings** ➔

1. The deadline for the conclusion of the proceedings is seventy-five days from the date on which the request is received. In the cases provided by Section 4(1) and (2) the deadline runs from the time the principal is identified, or from the moment the regularised or completed request is received. In the cases in which the request for action referred to in Section 2(1)(b), numbers (5), (6) and (7) is not accompanied by a copy of the advertisement, the deadline runs from the moment the Authority comes into possession of a copy of the advertisement.

2. The term referred to in subsection (1) may only be extended one time by ninety days in the following cases:

- a. when, pursuant to Section 8(1), expert evidence or consultancy are ordered, or if a request is made for information and documentation;
- b. when the Authority requests the advertiser, pursuant to Section 7(4) of the Legislative Decree, to provide evidence regarding the material accuracy or truthfulness of the factual claims to be found in the advertisement.

3. The deadline referred to in subsection (1) is extended by onehundred-eighty days in the event that the advertiser is resident, domiciled, or has its office abroad.

4. Section 12 shall apply when an opinion is requested from the Communications Regulatory Authority.

5. In the case in which, pursuant to Section 13, the Authority orders the proceedings to be suspended, the term referred to in subsection (1) shall be suspended while awaiting a ruling from the self-disciplinary body, and in all events for a period not longer than thirty days, as set by the Authority.

### **Section 6. Participation in the proceedings** ➡

1. Individuals or entities representing public or private interests, or special interest entities which have set up associations or committees that may be damaged by the measure, may intervene in the course of the proceedings, by supplying written submissions, which must be signed by them, containing:

- a. the name, surname, company name or style, head office, residence or domicile of the party;
- b. the indication of the case in which the party wishes to intervene;
- c. an indication of the interest affected.

2. The official responsible for the proceedings shall, after ascertaining the regularity and the completeness of the request to intervene, notify the party that it may:

- a. have access to the case file;
- b. submit written memoranda and documents.

### **Section 7. Hearings** ➡

1. The official responsible for the proceedings may, where necessary to acquire or to appraise evidence acquired in the course of an investigation, or at the request of at least one of the parties, convene the parties to be heard at special hearings, guaranteeing the

right of controverting, and set a date for the hearing.

2. The official responsible for the proceedings shall chair the hearings pursuant to subsection (1). The parties may be represented by an attorney or any person of their choice who shall produce appropriate documentation to demonstrate their powers of attorney.

3. A minute of the proceedings, giving the main statements made by the parties, shall be drawn up at the hearings. At the end of the hearing the minutes are signed by the official responsible for the proceeding and by the attending parties. Whenever one of the parties is unable or unwilling to sign the minutes, this circumstance shall be written into the minutes, indicating the reason why. At the end of the hearing a copy of the minutes shall be given to the parties concerned at their request.

4. Purely for the purposes of minuting, the hearings may be tape-recorded.

### **Section 8. Expert testimony and consultancy** ➡

1. In the event that the Authority requires expert testimony or consultancy, notification thereof shall be served upon the parties to the proceedings.

2. The results of the expert testimony and the consultancy referred to in subsection (1) shall be served on the parties by the official responsible of the proceedings.

3. The parties that have been notified of the commencement of proceedings and those who have intervened pursuant to Section 6, may appoint their own technical consultant, notifying the official responsible for the proceedings thereof, to be present at the operations performed by the consultant engaged by the Authority and may submit written documents and other materials, within ten days of the communication referred to in subsection (2), containing observations and remarks on the results of the technical investigations.

### **Section 9. The appointment of expert witnesses** ➡

1. Expert witnesses and consultants shall be appointed by the Authority from the list of those registered by the courts as expert witnesses or from universities or research institutes, which will appoint individuals deemed to be professionally the most qualified to carry out the technical investigation requested.

### **Section 10. The burden of proof** ➡

1. In those cases where the Authority, pursuant to Section 7(4) of the Legislative Decree, requires the advertiser to submit evidence to demonstrate the data given in the advertisement, the official responsible for the proceedings shall send notification of this request to all the parties concerned, indicating the evidence sought, the reason for the request, and the deadline for the production of the evidence.

### **Section 11. Provisional suspension of the advertisement** ➡

1. Pursuant to Section 7(3) of the Legislative Decree, the Authority may, in particularly

urgent cases, act on its own initiative and with a reasoned measure to order the suspension of an advertisement deemed misleading, or the comparative advertising deemed unlawful.

2. When the request for suspension is submitted by one of the parties indicated in Section 2(1) of this regulation, the Authority may, in the original request, or in a separate request issued during the proceedings, order the suspension within thirty days of the date of receiving that request.

3. The official responsible for the proceedings shall give the parties a deadline for the submission of memoranda. After that deadline date, the case officer shall submit all the documentation to the Authority for its decision.

4. The Authority may issue a reasoned decision to provisionally suspend the advertisement, even before receiving the memoranda and submissions from the parties, when there are specific reasons which prevent the measure from being deferred any longer.

5. The official responsible for the proceedings shall notify the parties of the Authority's ruling.

6. The advertiser must immediately comply with the decision of the Authority to suspend an advertisement deemed misleading or a comparative advertisement deemed unlawful. Appeals against the suspension order of the Authority does not suspend its execution. The advertiser must immediately notify the Authority of compliance with the suspension measure.

## **Section 12. Conclusion of the investigation and request to the Communications Regulatory Authority for an opinion** ➡

1. The official responsible for the proceedings shall, whenever the case is deemed to be sufficiently thoroughly investigated, notify the parties of the date by which the investigation is to be completed, and a deadline that shall be not less than ten days thereafter by which they may submit final submissions or documents.

2. When the examination is completed, the official responsible for the proceedings shall submit the documentation to the Authority for the final ruling to be issued on the case.

3. The official responsible for the proceedings shall, in the cases provided by Section 7(5) of the Legislative Decree, request the Communications Regulatory Authority for an opinion before the formality provided in subsection (2) above, forwarding all the documentation of the case. The Communications Regulatory Authority shall issue its opinion within thirty days of receiving the request.

4. If the deadline passes without the Communications Regulatory Authority issuing an opinion or a request for further information for its examination, the Competition Authority proceeds independently of its opinion. If the Communications Regulatory Authority requests further information for its enquiries, the deadline referred to in subsection (3) above shall be set again, once only, counted from the time the Communications Regulatory Authority is provided with the information or the documents requested. The deadline date for completing the case set pursuant to Section 5 shall be suspended until the Competition Authority receives the opinion of the Communications Regulatory Authority, or until the deadline date for receiving it.

### **Section 13. Self-regulation** ➔

1. Those who, pursuant to Section 8(3) of the Legislative Decree, request the proceedings laid before the Authority to be suspended, shall also submit another request providing evidence of the existence of the proceedings before the self-regulating body, with appropriate information to identify that body and the subject-matter of the proceedings.
2. The official responsible for the proceedings shall, upon receiving the request for suspension pursuant to subsection (1), notify the parties thereof and set a deadline date for submission of representations. The official responsible for the proceedings shall notify the parties of the decision taken by the Authority regarding their appeal. The case officer shall also promptly notify the parties when the cause for suspension no longer obtains.

### **Section 14. The decision of the Authority** ➔

1. The official responsible for the proceedings shall notify the parties of the final ruling of the Authority, which, within twenty days of its adoption, shall be published in the bulletin referred to in Section 26 of law No. 287 of 10 October 1990.
2. The final ruling of the Authority shall also indicate the deadline for appeal and the body with which any appeal shall be filed.

### **Section 15. Publication of the decision or of a statement correcting the advertisement** ➔

1. When the Authority rules that an advertisement is misleading or that a comparative advertisement is unlawful pursuant to Section 7(6) of the Legislative Decree it shall order that its ruling be published in full, or in the form of an extract, or require a statement to be published correcting the advertisement at the expense and liability of the advertiser, indicating the medium and the formalities for the correction, setting a deadline by which this is to be done. A copy of the measure requiring the publication of the decision, either in full or in the form of an extract, or of a declaration of rectification, shall be sent to the owner of the medium in which the publication is to be made. The rectifying statement may take the form of a personal communication in the case of an advertisement addressed personally to its recipients and when it is possible to identify them.
2. After publishing the decision of the Authority and the statement correcting the advertisement referred to in subsection (1) above, the advertiser shall immediately notify the Authority of all the documents and printed materials on which they have been published or give the list of the addressees to whom the notice has been sent in the event that, pursuant to subsection (1), it is required to be served personally on the addressees of the original advertisement.

### **Section 16. Notices** ➔

1. The notices provided under this regulation are to be served by registered post with recorded delivery, delivery by hand against receipt, or by telefax with a request for written confirmation of receipt, or by cable. In the event of transmission by cable, the documents

shall be deemed as served on the recipient on the day in which they are sent, save where there exists evidence to the contrary.

2. The notices may be served on the applicant and any other intervening parties at the domicile indicated in the request. Notices shall be served on the principal of the advertisement and, if known, its author, at their last known office, residence or domicile address, or the address given in public registers and records. Whenever notices cannot be served, they shall be served in the form of a publication of a notice that proceedings have begun in the bulletin referred to in Section 26 of law No. 287 of 10 October 1990. A copy of the bulletin shall be at the disposal of all the parties concerned at the offices of the Authority.

### **Section 17. Repeal of norms** ➔

1. The Presidential Decree No. 627 of 10 October 1996 is repealed.

2. This decree, bearing the seal of State, shall be entered in the Statute Book of the Italian Republic. All are required to comply with and enforce it.