

# LEGAL FRAMEWORK FOR ADVERTISING COMMUNICATION

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## **Abstract:**

*Regarded as a form of commercial communication, advertising is one of the most effective tools for promoting a company's products or services. Given its major impact in establishing or changing economic and social behavior of costumers, advertising is one of the most influential forms of public communication. This article aims to identify and analyze the legal framework for advertising in Romania.*

*Key words: advertising; commercial communication; social behavior; economic behavior; legal framework*

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## **Introduction**

Romanian advertising regulations are contained in Law no. 148/2000 on advertising and Law no. 158/2008 regarding misleading advertising and comparative advertising. Given the significant impact of the audio-visual advertising, the legal provisions on advertising are also contained in Audio-Visual Law no. 504/2002. By setting the legal framework for advertising communication, Law No. 148/2000 on advertising has the purpose – as specified by law – to protect the consumers of goods and services, the people engaged in an activity of production, trade, providing a service or practicing a craft or profession, as well as to protect the general public interest against misleading advertising and the negative consequences of advertising. The same law also establishes the conditions under which the comparative advertising is permitted.

## **Legal terminology specific to the advertising communication**

In addition to the meaning given by the creators or beneficiaries of advertising, the advertising legislation proposes a clear definition of the field-specific terms. Therefore, Law no. 148/2000 on advertising suggests the following meanings:

- a) advertising** - any form of presentation of a trade, business, craft or profession, in order to promote the sale of goods and services, rights and obligations;
- b) misleading advertising** - any advertising which in any way, including its presentation, deceives or is likely to deceive any person to whom it is addressed or who makes contact with it and may affect the economic behavior, affecting the consumer's interest, or that may affect the interests of a competitor;
- c) comparative advertising** - any advertising which explicitly or implicitly identifies a competitor or the goods or the services provided by it;
- d) subliminal advertising** – any advertising which uses stimuli which are too weak to be perceived consciously, but that can influence the economic behavior of a person.

The Audio-Visual Law no. 504/2002, gives the following legal definitions for the field-specific terms:

- **advertising** - any form of message, communicated either based a contract with a natural or legal person, public or private entity, in exchange of a tariff or other benefits,

for a trade, craft, professional, in order to promote the supply of goods, including property and intangible assets or services against payment or communicated for self-promotional purposes;

- **surreptitious advertising** - the presentation in programs, using words, sounds or pictures, of goods, services, trade names, trademarks, or activities of a producer of goods or provider of services, if the presentation is done intentionally by the broadcaster for an undeclared advertising purpose, and that can confuse the public about its true purpose; such a presentation is considered intentional especially when done in exchange for material benefits, mutual services or other benefits with similar effect;
- **teleshopping** - public communication of direct commercial offers regarding the supply against payment of goods, including real estate and intangible assets, or, where appropriate, the provision of services;
- **sponsorship** - any contribution made by a natural or legal person not engaged in radio or television activities or in the production of audiovisual works, whether this contribution is to finance audiovisual programs in order to promote its trade name, trademark, image, activities or products.

The Law no. 148/2000 and the Law no. 158/2008 defines publicity or advertising leading, from the very beginning, to a confusion of terms. The definitions “generates the following errors: publicity is defined through another promotion technique – *sales promotion* – which is another promotion technique; it is not clear whether through this definition publicity is assimilated to the advertising or to the public relations. In America, the native place of advertising, in the specialty literature, there are two terms: *advertising* (meaning *reclamă*) and *publicity* (meaning *publicitate*). *Publicity* is considered an unpaid form of advertising, a component and a first instrument of the public relations. Therefore, the differences between them are fundamental. The confusion created is due to translations because in at least three major languages: French, Spanish and Portuguese, there is only one term for *advertising* and *publicity*. Unfortunately, the law does nothing but support the confusion and even it emphasizes it by considering publicity as a way to promote the sales; there are no references to the character of this presentation, whether it is paid or not and by whom; there are no references regarding the transmission channel<sup>233</sup> .

### **Legal provisions concerning comparative and misleading advertising**

According to Law no. 148/2000, the advertising has to be **decent, fair** and developed **in the spirit of social responsibility**. According to art. 6 of the law mentioned above, advertising is illegal if:

- a) it is misleading;
- b) it is subliminal;
- c) it offends human dignity and public morality;
- d) it includes discrimination based on race, sex, language, origin, social origin, ethnic identity or nationality;
- e) it infringes religious or political beliefs;
- f) it damages the image, honor, dignity and privacy of individuals;
- g) it exploits people’s superstition, credulity or fear;
- h) it damages the safety of people or incites to violence;
- i) it encourages a behavior prejudicial to the environment;

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<sup>233</sup> Ban, O., Coita, D. C., *Romanian legislation regarding the regulation of marketing communication*, Management & Marketing, 2009, vol. 4, No. 3, available at: <<http://www.managementmarketing.ro/pdf/articole/158.pdf>>, [Accessed March, 10, 2013]

j) it promotes the sale of goods or services that are produced or distributed contrary to law.

According to the same law, the comparative advertising is prohibited if:

- a) the comparison is misleading;
- b) it compares goods or services with different purposes and destinations;
- c) it does not compare objectively one or more material, relevant, verifiable and representative features – which may include the price - of some goods or services;
- d) it creates confusion on the market between the advertiser and a competitor or between the advertiser's trademarks, trade names or other distinguishing marks, goods or services and those of a competitor;
- e) it discredits or denigrates the trademarks, trade names, other distinguishing marks, goods, services or standing of a competitor;
- f) for products with designation of origin, it does not relate in each case to products with the same designation;
- g) it takes unfair advantage of the reputation of a trademark, trade name or other distinguishing marks of a competitor or the designation of origin of the competing products;
- h) it presents goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name;
- i) it violates any other provisions of the Competition Law no. 21/1996.

According to Law no. 158/2008, in order to determine whether the advertising is misleading or not, all aspects should be taken into account, especially any information concerning:

- a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture of goods or rendering of services, fitness for purpose, destination, quantity, technical and operational parameters, geographical or commercial origin, results to be expected from their use or the results and key features of tests or checks carried out on goods or services;
- b) the price or the manner in which the price is calculated, and conditions under which the goods are supplied or the services provided;
- c) the nature, duties and rights of the trader who is advertising such as: identity and assets, qualifications and ownership of industrial, commercial or intellectual property rights or his awards and distinctions.

### **Specific provisions regarding the advertising of certain products**

The advertising of certain categories of products, such as tobacco, alcohol, or drug products or for children, is subject to strict provisions of the law. Therefore, according to Law no. 148/2000, it is illegal to advertise for tobacco products in radio and television programs, in newspapers, on the first and last page or cover of printed material or on public transportation tickets.

It is also prohibited to advertise for alcoholic beverages and tobacco products inside schools and healthcare facilities or at a distance less than 200 meters from their entrance, measured on the public road.

The advertising for alcoholic beverages and tobacco products is not allowed in publications for minors, in theaters before, during and after shows for minors.

The advertising for alcoholic beverages and tobacco products is also illegal under the following circumstances:

- a) it targets minors;
- b) it shows minors consuming these products;
- c) it suggests that alcoholic beverages or tobacco products have therapeutic properties or have a stimulating or sedative effect or may solve personal problems;

- d) it gives a negative image about abstinence;
- e) it emphasizes the alcohol content of alcoholic beverages in order to stimulate the consumption or establish a connection between alcohol and driving a vehicle;
- f) it does not contain warnings in Romanian language for tobacco products.

As regard **products and services for minors**, such advertising is forbidden if:

- a) it contains elements that affect them physically, morally, intellectually or mentally;
- b) it encourages indirectly the children to buy products or services, by taking advantage of their lack of experience or credulity;
- c) it affects the special relationship between minors, on the one hand, and parents or teachers, on the other hand;
- d) it shows, in an unjustified manner, minors in dangerous situations.

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

The analysis of the legislation regulating the advertising communication has emphasized “three types of problems: on one hand, the existing legislation, through the wording and treatment manner of the aspects concerning the communication does not start from a common understanding ground either for theoreticians or for practitioners. This thing makes it difficult to check when applicable in practice; on the other hand, the existing legislation does not cover the practices in the field, the difficulty or the impossibility to frame the practices within a category or another leading to abuses; where there is a clear regulation and the law is broken, there is no sufficiently developed and/or vigilant control device in order to correct or eliminate the dubious practices”<sup>234</sup>.

## Conclusions

Increasingly present in the area of public communication and having a growing impact on influencing the economic behavior of the consumers, the advertising is covered by a consistent and well-defined legal framework. The violation of the legal provisions on advertising attracts the material, civil, administrative or criminal liability, as applicable. The author, the advertising producer and the legal representative of the media is jointly liable with the advertiser, for breach of the legal provisions relating to advertising, except for infringements concerning misleading and comparative advertising, in which case the responsibility lies only with the advertiser. As articulated, the advertising legislation addresses the need to regulate a dynamic area and with a powerful social and economic impact.

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