

Act LVIII of 1997

on Business Advertising Activity

/competition law related provisions of the Act */

In order to ensure the protection of consumer interests and sustain market competition which serves economic efficiency and social welfare, for the purposes of achieving fair communication with consumers, safeguarding the interests of undertakings complying with the requirements of business fairness and facilitating the sale of goods and services while recognizing the importance of professional self-regulation, Parliament passed the following Act to regulate business advertising activity:

General Provisions

1. § This Act shall apply to any business advertising activity performed by natural and legal persons and companies with no legal personality, including branches in Hungary of undertakings domiciled abroad (hereinafter jointly referred to as „undertakings”) and to sponsorship.

2. § For the purposes of this Act:

a) The „publisher of the advertisement” is a person which possesses means suitable for the publication of the advertisement, and uses those means to make the advertisement accessible.

g) „Consumers” are all natural and legal persons and companies with no legal personality on which the advertisement is targeted.

h) „Business advertising” means the making of a representation in order to promote the sale or use in any other way of products, services, immovable property, rights and obligations (hereinafter referred to as “goods”) and the popularization of the name, mark or activity of an undertaking, furthermore, the familiarization of goods or designations of goods (hereinafter referred to as “advertising”).

n) The term „special offer” means all offers, which differ from the established commercial practice due to the limitations imposed on them in terms of time, quantity, quality or any other feature or for other reasons. Such other reasons are, in particular, seasonal sales promotions, clearance sales, discount sale offers whether temporary or tied to a special event, furthermore promises relating to bonuses, gifts or prizes.

o) „Misleading advertising” means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or may injure the rights of other undertakings which are engaged in the same or a similar activity as that of the advertiser.

p) "Comparative advertising" means any advertising, which indirectly or directly identifies another undertaking which is engaged in the same or a similar activity as that of the advertiser or goods manufactured, sold or displayed by another undertaking, the intended use of which is the same as or similar to that of the goods featuring in the advertising.

* Taken from the consolidated version of the Act as the Act was last amended by Acts XCVIII of 2006, CV of 2006 and CIX of 2006.

r) „Advertiser” is the person in the interest of which the advertisement is published, or which orders the publication of the advertisement in its own interest.

s) The term „advertising service provider” means a person which creates or produces, in its field of activities, the advertisement or provides other services related thereto.

x) „Sponsorship” means any support given to an event, activity or, in connection with an event or activity, to a person, the object or direct or indirect effect of which is the encouragement of the purchase or use of certain goods.

[2/A. § - 3. §]

General Prohibitions on and Restrictions of Advertising

[4. § - 6. §]

7. § (1) It shall be prohibited to publish misleading advertisements.

(2) In determining whether advertising is misleading, account shall be taken in particular of any information it contains concerning:

a) the general features of goods,

b) the price or the manner in which the price is calculated, and the other contractual terms and conditions on which the goods are purchased,

(c) the appraisal of the advertiser, such as his nature, attributes and rights, his assets, qualifications, awards and distinctions.

(3) Information concerning the general features of goods within the meaning of point a) of Section (2) is in particular any information about their geographical or commercial origin, the components used for producing them, safety factors, their impact on health, their technical or environmental features, energy consumption, furthermore, their availability, date of manufacture, quantity manufactured, the results to be expected from their use or on tests or checks carried out on them, nature, furthermore any information required, furthermore, any information needed for their use, delivery, usage or maintenance.

7/A. § (1) Comparative advertising shall be permitted when the following conditions laid down in Sections (2) and (3) below are met.

(2) Comparative advertising shall not

a) be misleading,

b) damage the reputation of the trade name, goods, designations of goods or other distinguishing marks of another undertaking,

c) create confusion between the advertiser and another undertaking or between the advertiser's trade name, goods, designations of goods or other distinguishing marks and those of another undertaking,

d) create an unfair advantage resulting from the exploitation of the reputation of another undertaking's trade name, goods, designations of goods or other distinguishing marks,

e) constitute an infringement of the prohibition of imitation of the goods or the features of goods mentioned in Article 6 of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter referred to as „PURA”) of another undertaking.

(3) Comparative advertising

a) may only compare goods intended for the same purpose or meeting the same needs,

b) shall objectively compare one or more material, representative, relevant and verifiable features of the goods,

c) shall make an objective representation of the comparison of prices of goods when it makes such a comparison,

(4) In the case of legitimate comparative advertising the holder of a trade mark may not prevent third persons, based on the exclusive rights conferred to it, from appropriately using its trademark in comparative advertising, when such a use is indispensable to make the comparison and does not go beyond the extent what is absolutely necessary.

(5) The results of or data about comparative tests carried out by third persons may only be reproduced or referred to with the prior consent of those persons.

7/B. § Advertisements containing a special offer including a special price offer may only be published if they indicate in a clear and unequivocal way the goods to which they relate and the dates on which the offer starts and ends or, where appropriate, the date of the start of the period during which the special offer shall apply as long as the goods are available.

7/C. § It shall be prohibited to publish advertisements that make the illusion of a real choice by drawing a comparison with

- a) fictional goods or undertakings,
- b) goods which are not available on the market,
- c) goods or undertakings which are not specified in a clear and identifiable manner,
- d) goods or undertakings which do not meet the same needs.

Prohibitions and Restrictions Relating to the Advertising of Certain Goods

[8. § – 13/A. §]

Rules for Establishment of Responsibility

14. § (1) The advertiser, the advertising service provider and the publisher of the advertisement shall all bear responsibility for the infringement of the provisions of this Act, with the exceptions defined by Sections (3) and (4). The advertiser, the advertising service provider and the publisher of the advertisement shall bear joint and several liability for any damage caused by the infringement of these provisions.

(3) The advertiser shall bear responsibility for the infringement of the provisions laid down in §§ 6(1) and 7 to 7/B.

[(4)]

The Advertising Supervision Proceeding

15. § (1) Control of compliance with the provisions relating to business advertising activity and those relating to prohibited sponsorship shall be performed by the consumer protection authority, with the exceptions defined by Section (3); within this framework the authority shall conduct infringement proceedings for the violation of those provisions (hereinafter referred to together as „advertising supervision proceedings”).

(3) The court or the Hungarian Competition Authority has competence to proceed for infringements of the provisions laid down in §§ 7 and 7/A of this Act as provided for by PURA; making an establishment according to points b) to e) or point a) of § 7/A(2) belongs to the competence of the court or the Hungarian Competition Authority respectively. The Hungarian Competition Authority shall have competence to establish whether the requirements laid down in Section (3) of § 7/A relating to comparative advertising are satisfied; the court shall also have

competence when the need arises to answer such a question in a case falling otherwise in its competence.

(4) The responsibilities concerning the enforcement of Regulation (EC) No 2006/2004 of the European Parliament and of the Council, in respect of infringements within the European Community of the provisions laid down in legal acts of the Member States transposing Council Directive 84/450/EEC and Directive 97/55/EC of the European Parliament and of the Council, shall be performed by the Hungarian Competition Authority.

(5) Proceedings conducted under this Act shall not prevent injured parties, the personal rights of which were infringed, from enforcing claims under the general rules of civil law directly in court. When the amount, which can be awarded in damages under the rules of civil liability is not proportional to the gravity of the misconduct, the court may also impose a fine to be devoted to public purposes on the person infringing the law.

16. § (1) Advertising supervision proceedings are initiated upon application or ex officio.

(2) The initiation of advertising supervision proceedings may be applied for by any person the right or legitimate interest of which is harmed or the legal status of which is affected by the infringement of a provision relating to business advertising activity or to prohibited sponsorship. When the identity of the consumers suffering damage cannot be established or the enforcement of the claims would be inappropriate considering the number of the consumers suffering damage, administrative bodies and social organisations protecting the interests of consumers shall also be entitled to initiate a proceeding. In the event of an infringement of the provisions of § 5/A, the advertising supervision proceeding shall be conducted if initiated by the police.

(3) Social organisations protecting the interests of consumers shall be entitled, in their respective fields, to the legal status of a party to the advertising supervision proceeding, with the exception of the proceedings specified by § 17(2). Qualified entities constituted according to the law of a Member State of the European Economic Area and figuring in the list published in the Official Journal of the European Communities as provided for by Article 4(3) of Directive 98/27/EC on injunctions for the protection of consumers' interests shall also be entitled, in respect of the interests protected by them, to initiate advertising supervision proceedings.

(4) Advertising control proceedings may not be initiated after a period of one year following the publication of the advertisement infringing the provisions relating to business advertising activity or the event or activity through which the infringement was committed. When the party concerned acquires knowledge of the infringement of its personal rights after a period of one year, the provision laid down in § 326(2) of Act IV of 1959 on the Civil Code of the Republic of Hungary shall appropriately apply to establishing the deadline for the initiation of the proceeding.

(7) Administrative bodies and social organisations performing responsibilities concerning the protection of health and of the non-smokers, respectively, shall also be entitled to initiate as parties advertising supervision proceedings against prohibited sponsorship.

17. § (2) When the Hungarian Competition Authority proceeds according to § 15(3), the procedural rules laid down in PURA shall apply with the exceptions defined by Section (3) and §§ 19(2) and 19/A. The provisions laid down in Section (3) and §§ 19(2) and 19/A shall also apply in comparative advertising proceedings of the court.

(3) The advertiser may be required to furnish evidence as to the accuracy of factual claims in advertising if, taking into account the legitimate interests of the advertiser and any other interested persons, such a requirement appears appropriate on the basis of the circumstances of the particular case.

18. § (1) If the proceeding body establishes in the course of the proceeding that unlawful advertising or prohibited sponsorship (hereinafter referred to together as “infringement”) was performed, it may

a) order the situation infringing the Act to be eliminated,

b) prohibit the continuation of the conduct which infringes the provisions of the Act.

(2) The proceeding body may impose, by its decision, a fine on persons infringing the provisions of this Act. In the event of multiple infringements, cumulative fines may also be imposed.

(3) The amount of the fine shall be established with all the relevant facts of the case taken into account, in particular the scope and gravity of the infringement of consumers’ interests, the duration of the unlawful situation and the repeated display of the unlawful conduct. Fines imposed, which became final but were not paid, shall be exacted in the same way as and together with taxes.

(4) Fines imposed on broadcasters shall be paid into the Broadcasting Fund. Otherwise, fines shall be paid to the account of the General Inspectorate [for Consumer Protection].

19. § (1) The proceeding body shall, by an interim measure, prohibit in its injunction the continuation of the unlawful conduct or order the elimination of the unlawful situation, when prompt action is required taking into account the scope and gravity of the infringement.

(2) The proceeding body shall decide immediately, without delay about ordering the interim measure to be taken.

[(3)]

19/A. § The proceeding body may prohibit, if misleading advertising has not yet been published, such publication when it establishes that advertising to infringe, if published, any provision relating to business advertising activity. No fines may be imposed besides such a ban on publication.

[**20. §**]

Closing provisions

[**21. §**]

22. § (1) The provisions laid down in Act I of 1996 on Radio and Television Broadcasting shall apply to radio or television advertising in the event that those provisions establish requirements different from those laid down by this Act.

[(2)]

[**23. § - 25. §**]

25/A. § (1) Purpose of this Act is harmonization with the following legal acts of the European Union:

a) Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising;

b) Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising;

c) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests [§ 16(3) of this Act];

d) Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States

relating to the advertising and sponsorship of tobacco products, with the exception of Article 5(2) of the Directive.

(2) § 15(4) of this Act provides for the implementation of Article 4(1) of Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.