

## **Act of 5 April 2001 on advertising and change and amendment of some laws**

**Date of adoption:** 5 April 2001

**Date of entry into force:** 1 May 2001

The National Council of the Slovak republic has resolved on the following Act:

### **Article I**

#### **§ 1 Subject of the law**

This act stipulates the general requirements for advertising, advertising requirements for certain products, consumer and entrepreneur's protection against the effects of misleading advertising and unacceptable comparative advertising and competencies of state administration authorities in supervision over observance of this Act. This Act is applied unless a special law stipulates otherwise 1).

#### **§ 2 Definitions**

(Subsection 1 below amended by Act 525/2005, see Article I.1 of Act 525/2005 Changing and amending Act on Advertising and on changes)

(1) According to this Act

- a) Advertising is presentation of products in any form in order to market them
- b) Product is goods, services, real estates, commercial name 2), and trademark 3), indication of products' origin, 4) and other rights and obligations connected with enterprising
- c) Propagator of advertising is a natural or legal person who propagates the advertising within his enterprising.

(2) Advertising is not

- a) Identification of legal person's seat, natural person's permanent residence, identification of business premises or organization's department of legal or natural person by business name as well as marking of buildings, lands and other real estates or movables owned or in hire by those persons
- b) Identification of letters and envelopes by business name or trademark,
- c) Marking products or their packaging with data that have to be presented under special regulation 5),
- d) Publishing of annual report about the economy, closing of accounts, audit or other corporate information, if the obligation to publish these results from special regulation 6).

### **§ 3 General requirements for advertising**

(2) Advertising has to be in compliance with regulations of economic competition 7) and good morals 8)

(3) Advertising must not be misleading 9).

(4) Advertising must not be hidden.

(5) Advertising must not

- a) Abuse consumer's trust, lack of his experiences or knowledge;
- b) Present products the production, sale, supply or use of which are outlawed;
- c) Contain anything that disgraces the human dignity, insults national feeling or religious feeling as well as any discrimination on basis of sex, race and social origin;
- d) Propagate violence, vandalism or vulgarity and entice to unlawful acts or agree with it;
- e) Present nakedness of human body in scandalous way;
- f) Present products that damage the environment or products harmful to life or health of the people, animals or plants without specific and clear warning in advance;
- g) Threat physical health and mental health of citizen;
- h) Present products as beneficial to health of people, animals or plants if it is not proved by professional opinion;
- i) Present foodstuffs and food supplements as if they have the same effect as medicaments;
- j) Use the perception through senses that affects human's memory without realising it (sub consciousness perception);
- k) Contain personal data, data about property relations of persons without their prior consent;
- l) Refer to statements of other persons without their prior consent;
- m) Infringe the rights of other people without their consent;
- n) Misuse the trust of under-aged persons and in particular.

1. To incite behaviour that can be a threat to their health, psychic development or moral development,
2. To figure them in dangerous situations,
3. To encourage them to purchase of improper products or products the sale of which is prohibited to these persons, or purchase of products by telephone, fax or electronic computer network in a way that their inexperience and trust is misused
4. To contain directly the challenge for under-aged persons to encourage their parents or other persons to purchase products.

(6) Advertising has to comply with requirements for public speeches, to keep language culture principles, grammar and spelling rules, pronunciation rules of Slovak language and established professional terminology.

(7) Advertising must not be disseminated by automatic telephone call system, fax or electronic mail without the previous consent of their user who is the recipient of advertisement.

(8) Advertising must not be disseminated to the address if recipient refuses the delivery of advertising in advance.

(9) Advertising of special product offer has to contain:

- a) Starting date from which the period of special offer will last, unless this period has already started;
- b) Date of the end of period for special offer or information that the special offer will last until the stock lasts.

#### **§ 4 Comparative advertising**

(1) Comparative advertising is advertising that directly or indirectly designates another competitor<sup>10</sup> or his products.

(2) Comparative advertising is acceptable, if it:

- a) Compares products that satisfy the same needs or are designed for the same purpose;
- b) Compares without prejudice one or more concrete, typical, essential and provable properties of products including their price; concerning products with origin indication 4), it compares only products with the same indication;
- c) Sufficiently distinguishes competitors and their products so that they cannot be exchanged;
- d) Does not disrepute competitors, their condition, acts, products or other distinguishing features;
- e) Does not misuse the advantage of product goodwill or other competitor's distinguishing feature of competitor;
- f) Does not present product as an imitation or product copy which is protected by trademark or commercial name;
- g) Is not misleading 9).

(3) Any other comparative advertising than under paragraph 2 is not acceptable.

## **§ 5 Advertising of alcoholic drinks**

(1) Advertising of alcoholic drinks 11) must not:

- a) Put into context consumption of alcohol with its positive effect to physical performance or mental performance;
- b) Claim that alcoholic drinks have curative effects, stimulating or sedative effects or those they help to solve personal problems;
- c) Encourage to non-moderate consumption of alcohol or present abstinence or sobriety as shortcoming;
- d) Stress the alcohol content in drinks as the mark of their quality.

(2) Advertising of alcoholic drinks must not be targeted to under-aged persons and no person considered as under-aged must be in any connection with the consumption of alcoholic drinks in advertising.

## **§ 6 Advertising of tobacco products**

(§6 amended and supplemented by Act 525/2005, see Article I. 2, 3, 4 of Act 525/2005 Changing and amending Act on Advertising and on changes)

(1) Advertising of tobacco products is outlawed 12):

- a) On all types of information carriers;
- b) By distribution of tobacco product samples to the public;

c) On advertising articles that are not related to smoking and that are distributed to the public, excluding advertising articles that are distributed at the place of products sale.

(2) Tobacco products advertisement is not

a) Marking specialized tobacco stores and articles for smokers stores with the name "Tobacco";

b) Marking transportation means for tobacco products with the trademark of the producer;

c) Publishing leaflets, brochures and other publications designed exclusively for producers and traders with tobacco products and tobacco;

d) Information about concrete tobacco product designed for consumer, placed in tobacco store, which has to contain the warning about harmfulness of smoking and has to be placed so that it addresses especially visitors coming to the store;

e) Distribution of tobacco products on meetings related with tobacco products production and sale.

## **§ 7 Advertising of guns and ammunition**

(1) Advertising of guns and ammunition 13) is prohibited.

(2) Prohibition of advertising under paragraph 1 does not apply to:

a) Information determined only for professional public in production and trade with guns and ammunition;

b) Advertising of guns and ammunition in stores or exhibitions specialised in guns and ammunition sale including their shop windows and facade or in parts of stores designated for guns and ammunition sale;

c) Advertising in professional literature and professional periodical press.

## **§ 8 Advertising of medicaments**

(1) Advertising of following medicaments is prohibited 14):

a) Which are not registered in the Slovak Republic;

b) That contain narcotics, psychotropic materials and preparations 15);

c) Dispensation of which is bound to medical prescription or veterinary prescription;

d) Dispensation of which is not bound to medical prescription, however they are paid based on health insurance under a special regulation 16).

e) That mentions effects of drugs in treatment of tuberculosis, contagious venereal diseases, serious infectious diseases, tumorous diseases, chronic insomnia, metabolism malfunction diseases and psychic diseases.

(2) Advertising of medicaments must not be convincing that:

- a) Medical examination or medical interventions are unnecessary;
- b) One drug is more effective or as effective as another drug or that the drug does not have any side effects;
- c) Health condition of the person might be better after taking the drug;
- d) Health condition of the person might be worse if he/she does not use the drug, this prohibition does not apply to general vaccinations.

(3) Advertisement of drugs also must not:

- a) Compare the drugs with foodstuffs or cosmetic products;
- b) Suggest that safety or effect of drug results only from use of natural substance if it is not professionally proved;
- c) Offer to determine diagnosis or treatment without medical examination with recommendation to use particular drug;
- d) State effects of the drug with reference to effects of drug on other persons;
- e) Contain data about drug registration;
- f) Contain recommendation of scientists, physicians or famous personalities;
- g) Use an excessive or horrible presentation of human organism changes resulting from disease or damage and depict the effect of drug in human organism with respect to these changes;
- h) Be designed for under-aged person.

(4) Advertising must contain

- a) Name of the drug and name of medicament it contains;
- b) Necessary information about the correct use;
- c) Explicit and clear notice to read carefully the instruction about correct use of medicine included in written information for users of medicine which is packed with the medicine.

(5) All advertising elements have to be in compliance with information included in comprehensive characteristics of medicine properties.

(6) The advertisement has to be clear that it is the advertisement of medicine it has to warn about risks of use and contain recommendation to consult use of medicine with person authorized to prescribe or dispense medicine.

(7) What is not considered as advertising of drugs:

- a) Information for professional public 17) even if it is about medicine dispensation on of which is bound to medical prescription, or medicine which contains narcotics, psychotropic substances and preparations;
- b) Information determined for medicine registration;
- c) Information connected with the health condition of a person, unless it mentions concrete medicine;
- d) Written information for users of medicines and summary of characteristic properties of medicine under a special regulation<sup>18</sup>).

(8) The customer of medicine advertising can be only the holder of decision about medicine registration.

### **§ 9 Advertising of suckling baby preparations and supplementary preparations**

(1) Advertising of suckling baby preparations and supplementary preparations<sup>19</sup>) is acceptable only in publications focused on care for suckling babies and little children and in scientific publications and can only contain data that are scientifically and materially correct. It must not lead to the conclusion that suckling baby preparations and supplementary preparations are equal with breast milk or that they are better than breast milk.

(2) Advertising of suckling baby preparations and supplementary preparations:

- a) Has to contain information about their correct preparation and right use;
- b) Must not contain expressions such as “humanized”, “maternized” or similar expressions.

(3) Advertising of suckling’s preparations furthermore:

- a) Must contain clear and easily readable text „Important warning“ complemented by text pointing at the advantage of breast-feeding with recommendation to use the product only on basis of medical, nourishment or medicaments experts or other experts dealing with breast-feeding professionally;
- b) Must not contain depiction of suckling baby or such picture or data that might idealize use of such product; however it can contain graphic description to identify the product or illustration of the method of its preparation or use.

(4) Advertising of suckling’s preparations by distribution of samples, pointing out the discount, adding other products or by special offer is prohibited.

### **§ 10 Supervision**

(Subsection a), d) below amended by Act 525/2005, see Article I.5, 6 of Act 525/2005 Changing and amending Act on Advertising and on changes)

Supervision over observance of this law is performed by:

- a) The Slovak agriculture and food inspection 20 ) over the advertising of food, cosmetic products and tobacco products;
- b) The State institute for medicament control 21) over the advertising of medicine and suckling's preparations and supplementary preparations;
- c) The State institute for veterinary medicaments control 21) over advertising of veterinary medicaments;
- d) The Slovak trade inspection22) over the advertising which does not belong under the supervision of authorities mentioned under a) to c) in accordance with their jurisdiction.

### **§ 11 Sanctions**

(§11 amended and supplemented by Act 525/2005, see Article 1.7, 8, 9 of Act 525/2005 Changing and amending Act on Advertising and on changes)

(1) If supervisory authorities according to § 10 (hereinafter referred to as "supervisory authority") find breaking of this law, they will prohibit dissemination of advertising; they can prohibit dissemination of advertising even when there is a threat of breaking provision of § 3 paragraph 2 or § 4 paragraph 3. Supervisory authority in its decision about prohibition of advertising propagation can entail the obligation to publish this decision or its part and obligation to publish the corrective statement in mass communication means.

(2) In proceeding concerning violation of §3 paragraph 2 and §4, the buyer of advertising is obliged, upon request by the supervisory authority, to submit evidence about veracity of material advertising data within 15 days from the delivery of notice for their presentation. If the buyer of the advertising does not submit such evidence to the supervisory authority it will be considered that advertising is misleading or comparative advertising.

(3) Besides the measures under paragraphs 1 and 2 the supervisory authority will impose a fine:

- a) Up to 100,000 SK to the advertisement propagator for breaking of §3 paragraph 5 provision;
- b) Up to 2,000,000 SK to the advertisement propagator for breaking general requirements for advertising under §3 paragraph 1 and paragraph 3 - 7 and requirements for advertising of certain products under §5 - 9, c) up to 5,000,000 SK to the advertisement buyer for misleading advertising under §3 paragraph 2 and unacceptable comparative advertising under §4.

(4) When imposing a fine Supervisory authority takes into account the seriousness, duration, consequences of unlawful act and also the fact whether it is repeatedly violation of this law.



(5) The fine can be imposed within the period of one year from the date when supervisory authority found out about breaking of the law, but not later than three years from the date of breaking this law.

(6) Proceeds from fines imposed in performing supervision over observance of this law are the income to the state budget.

(7) The general regulation about administrative proceeding applies to action of supervisory authorities in imposing sanctions 23).

## **§12 Revocation provisions**

The following laws are being revoked:

1. The law of the National Council of the Slovak Republic No220/1996 of the Code about advertising in version of the law No140/1998 of the Code.

2. §3 of the law No67/1997 of the Code about non-smokers protection

## Article II

The law No.513/1991 of the Code, Commercial Code in version of the following laws: the law No.264/1992 of the Code, law No.600/1992 of the Code, law of Parliament of the Slovak Republic No278/1993 of the Code, law of Parliament of the Slovak Republic No249/1994 of the Code, law of Parliament of the Slovak Republic No106/1995 of the Code, law of Parliament of the Slovak Republic No171/1995 of the Code, law of Parliament of the Slovak Republic No58/1996 of the Code, law of Parliament of the Slovak Republic No317/1996 of the Code, law of Parliament of the Slovak Republic No373/1996 of the Code, law No11/1998 of the Code, law No127/1999 of the Code, law No263/1999 of the Code and law No238/2000 of the Code is being changed and amended as follows: 1. § 45 including the title sounds:

## **§ 45 Misleading advertising**

(1) Misleading advertising is the advertising of goods, services, real estate, commercial name, trade marks, country of origin of products and other rights and obligations connected with enterprising which misleads or can mislead the persons for whom it is designed or to whom it is given and which due to its false nature can affect economic behaviour of these persons or which damages or might damage another competitor or consumer.

(2) In the process of evaluation of misleading advertising it is necessary to take into account all its elements, especially information that it contains about

- a) Goods and services, their availability, preparation, structure, method and production date or delivery date, suitability and method of use, quantity, geographic or commercial origin or results that can be expected as a result of their use or results of their tests or control;
- b) Price or method how it is calculated and conditions under which the goods and services are delivered or provided;
- c) Characteristic elements of advertising competitor especially his identity, qualification, protected industrial right, intellectual property, appraisal or award.

2. In §50 paragraph 2 of the second sentence in the end, the following words are added: "or if he mentioned such data in comparative advertising".

### **Article III**

Law No308/2000 of the Act about transmitting and re-transmitting and about change of the law No195/2000 of the Act about telecommunications is being changed and amended as follows:

1. In §2, paragraph 4 reads:

"(4) This law applies also to legal persons or natural persons who are not transmitters according to paragraph 1 letter a) and b), paragraph 2 does not relate to them and who are not considered as they are established in EU-member state or in contracting party of the European Convention on cross-border television 8) if:

- a) They use the frequency 2) allocated to the Slovak Republic;
- b) They do not use the frequency allocated to the Slovak Republic, EU-member state or contracting party of European convention on cross-border television 8) but they use the satellite capacity of the Slovak Republic;
- c) They do not use the frequency allocated to the Slovak Republic, EU-member state or contracting party of European convention on cross-border television 8) nor the satellite capacity of the Slovak Republic, EU-member state or contracting party of European convention on cross-border television 8) but they use progressive signal transmitted to the satellite from the territory of Slovak Republic".

2. In § 32 paragraph 1, the second sentence reads:

"The general regulations about advertising apply to the transmitting under this law, unless it is stipulated otherwise by this law".

Footnote to the reference No.29 reads:

"29) Law No 147/2001 of the Coll.I. about advertising and change and amendment of some laws"

3. In §32 the paragraph 15 is deleted

## Article IV

This law enters into effect on 1 May 2001-06-04

Rudolf Schuster s.m.

Jozef Migaš s.m.

Mikuláš Dzurinda s.m.

### Notes:

- 1) e.g. consumer protection law No. 634/1992 of the Code in version of later provisions, the law of Parliament of the Slovak Republic No. 152/1995 of the Code about food in version of later provisions, the law of Parliament of the Slovak Republic No.1/1996 of the Code about audio-vision in version of later provisions, law No. 308/2000 of the Code about transmitting and re-transmitting and change of the law No.195/2000 of the Code about telecommunications in version of the law No.147/2001 of the Code.
- 2) § 8 - 12 of the Commercial Code.
- 3) §1 of the law No.55/1997 of the Code about trademarks.
- 4) Law No. 159/1973 of the Code about protection of products' origin indication in version of later regulations.
- 5) e.g. § 10 paragraph 1 and 2 of the law No. 634/1992 of the Code in version of later provisions, § 9 paragraph 1 of Parliament of the Slovak Republic law No. 152/1995 of the Code.
- 6) e.g. § 20 of the accountancy law No 563/1991 of the Code in version of later provisions.
- 7) e.g. §41 - 55 of the commercial code.
- 8) § 6 paragraph 3 of the law No. 634/1992 of the Code in version of later provisions.
- 9) § 45 of the commercial law.
- 10) § 41 of the Commercial code.
- 11) §1 of law of Parliament of the Slovak Republic No219/1996 of the Code about protection against misuse of alcoholic drinks and establishment and function of teetotal well-stations.
- 12) §13 of law of Parliament of the Slovak Republic No 152/1995 of the Code.
- 13) e.g. the law of Parliament of the Slovak Republic No.246/1993 of the Code about guns and ammunition in version of later provisions, law No179/1998 of the Code about the trade with military material and about the amendment of law No 455/1991 of the Code about trade enterprise (trade law) in version of later provisions.
- 14) §2 paragraph5 of law 140/1998 of the Code about medicaments and medical equipment, change of law No455/1991 of the code about trade enterprise (trade law) in version of later provisions and

about change and amendment of the law of Parliament of the Slovak Republic No220/1996 of the Code about advertising in version of later provisions.

15) §2 paragraph 1 - 3 of law No 139/1998 of the Code about drugs, psycho-tropic substances and preparations in version of law No260/1999 of the Code.

16) Law of Parliament of the Slovak republic No98/1995 of the Code about Medical treatment order in version of later provisions.

17) §44 paragraph 1 of Parliament of the Slovak republic Law No140/1998 of the Code in version of later provisions.

18) §25 and 26 of law No140/1998 of the Code in version of later provisions.

19) §6 paragraph 3 of the law of Parliament of the Slovak republic No152/1995 of the Code.

20) Law of Parliament of the Slovak republic No70/1986 of the Code about Slovak agriculture and grocery inspection in version of later provisions.

21) Law No140/1998 of the Code in version of later provisions.

22) Law of Parliament of the Slovak republic No71/1986 of the Code about Slovak trade inspection in version of later provisions.

23) Administrative Procedure Act No71/1967 of the Code (administration order).