

Business Advertising Activity Act LVIII of 1997

In order to ensure the protection of consumer interests and sustain market competition which serves economic efficiency and social welfare, while recognizing the importance of professional self-regulation, the Parliament hereby passes the following Act to regulate business advertising activity for the purposes of achieving fair communication with consumers, protecting the interests of enterprises, observing the requirements of fair business practices, and facilitating the sale of goods and services.

Section 1

General Provisions

This Act shall apply to any business advertising activity performed by private individuals, legal entities or economic associations without legal entity (hereinafter jointly referred to as: enterprises) in their capacity as advertisers, advertising service providers or publishers of advertising in the territory of the Republic of Hungary.

Section 2

For the purposes of this Act, the following terms shall have the following meanings:

- a. *Publisher of advertising*: an entity which possesses means suitable for the publication of advertising, and uses such to make advertising accessible.
- b. *Covert advertising*: advertising published in the form of communication suggesting seemingly neutral information.
- c. *Health institutions*: health organs, institutes, institutions, services or other organizations qualifying as health institutions based on separate legal regulations.
- d. *Adults*: persons older than 18 years of age.
- e. *Juveniles*: persons older than 14 but younger than 18 years of age.
- f. *Consumers*: all private individuals, legal entities and economic associations without legal entity towards whom or which advertising is directed.
- g. *Business advertising*: communication facilitating the sale or use in any other way of products, services, real estate, rights or obligations (hereinafter referred to as: goods); the popularization of the name, designation or activity of an enterprise; or the familiarization of goods or identification of goods (hereinafter referred to as: advertising).
- h. *Children*: persons younger than 14 years of age.
- i. *Pharmaceutical*: substance or compound registered in a procedure defined in separate legal regulations, which has been issued a license to market and has been qualified as a pharmaceutical.
- j. *Entities authorized to prescribe and sell pharmaceuticals*: physicians, pharmacists, producers holding an appropriate operating license for and taking part in the commercial distribution of pharmaceuticals, or pharmaceutical wholesalers.
- k. *Medicinal preparation not qualifying as a pharmaceutical*: substance or compound which does not qualify as a pharmaceutical but which has been recorded based on separate legal regulations, and has been licensed to be marketed as a medicinal substance not qualifying as a pharmaceutical.
- l. *Toy*: goods which have been clearly designed and manufactured for the purpose of a toy.
- m. *Comparative advertising*: advertising that directly or indirectly allows the recognition of another enterprise which engages in the same or a similar activity as the advertiser, or of goods manufactured, sold or introduced by such other enterprise for the same or similar purpose as those featuring in the advertising.
- n. *Advertiser*: entity in the interest of which the advertising is published, or which orders the publication of advertising in its own interest.
- o. *Advertising service provider*: entity which produces or creates advertising within its scope of activities, or provides other services related thereto.
- p. *Printed materials*: individual issues of periodicals, radio and television guides, books, leaflets and other textual publications (with the exception of bank notes and securities); as well as publications containing musical pieces, artwork, drawings or photographs; maps; film strips, video tapes, video disks, audio tapes and records with entertainment designed for public presentation;

as well as any other technical means with information or entertainment designed for public presentation.

- q. *Outdoor advertising media*: any means located outside a building for the purpose of presenting advertising, with the exception of point-of-sale means indicating the availability of goods.
- r. *Subliminal advertising*: advertising which, when published, due to time constraints or any other reason, influences the consumer in a psychological sense with stimuli from images, sounds or other effects of an intensity below the threshold required for conscious perception.
- s. *Test preparation*: preparation subject to clinical tests or test evaluations as defined in separate legal regulations, until such is registered or recorded as a pharmaceutical or a medicinal preparation not qualifying as a pharmaceutical, respectively, and a license to market such is issued.

Section 3

(1) Advertising may be published once the advertiser names its enterprise in an identifiable form, indicates its registered office or permanent business premises in Hungary, and - upon ordering the publication of advertising - presents its tax number to the advertising service provider (or in the absence of such, to the publisher of advertising), who shall register and retain such data for a period of one year.

(2) In the case of advertising relating to goods subject to prior quality testing or quality certification, as defined in separate legal regulations, the advertiser shall make a statement to the advertising service provider (or in the absence of such, to the publisher of advertising) that the testing has been completed, and the goods may be marketed on the basis thereof. If the goods are not subject to such prior quality testing or quality certification, a statement to this effect shall be made. In the absence of such statement, no advertising may be published. The advertising service provider or the publisher of advertising shall register and retain the statement of the advertiser for a period of one year.

(3) Advertising relating to goods to be sold to consumers in Hungary via mail order shall contain the designation of the advertiser in an identifiable form, indication of its registered office or permanent office (business establishment) in Hungary and its registration number as defined in separate legal regulations.

(4) In the interest of identification, the provisions of Subsections (1)-(3) shall apply *mutatis mutandis* for advertisers without a tax number and foreign or domestic offices.

(5) Advertising may be published only if it is made clearly perceptible that the information presented is advertising, and such is separated from the surrounding environment.

(6) Only parties authorized to use the distinctive mark as specified in Subsection (1) of Section 86 of Act LIII of 1995 on the General Rules of Environmental Protection may classify materials, products or technologies in terms of environmental protection, or refer to the favorable environmental attributes thereof in any advertising.

Section 4

General Advertising Prohibitions and Restrictions

Advertising may not be published if

- a. it infringes on personal rights, respect for the deceased or rights related to the protection of personal data,
- b. it encourages violence or any behavior that jeopardizes personal or public safety, the environment or nature,
- c. it generates a sense of fear.

Section 5

(1) Advertising targeted at children or juveniles may not be published in if

- a. it may harm their physical, intellectual or moral development,

- b. taking advantage of their credulousness or lack of experience, it directly encourages them to motivate adults to purchase goods.

(2) Advertising may not be published if it may harm the physical, intellectual or moral development of children or juveniles, including in particular advertising which shows children or juveniles in dangerous or violent situations or in situations with sexual emphasis.

Section 6

(1) Covert or subliminal advertising may not be published.

(2) Advertising is prohibited for goods whose production or marketing is illegal.

(3) Advertising may not be published if it contains a promise of tax exemption, tax allowance or the use of other tax advantage in place of or disproportionate to an actual service, or is otherwise misleading in respect of the tax advantage actually available.

(4) Advertising which does not contain all costs incurred in relation to the disbursement of consumer loans may not be published.

Section 7

(1) Comparative or other advertising may not be published if it may conflict with the prohibition of unfair competition or the prohibition of unfair influence of consumer decisions in accordance with Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter referred to as: UMPA).

(2) The findings of a comparative study prepared by any third party may be published or referred to in advertising only with the express prior consent of the party responsible for such study.

(3) Responsibility shall lie with the advertisers to ensure that the comparative findings, or the publication of or reference to any data in this case does not conflict with the prohibition defined in Subsections (1)-(2).

Prohibitions and Restrictions Related to Advertising for Certain Goods

Section 8

Weapons, ammunition, explosives or other means posing extreme threat to public safety, as defined in separate legal regulations, may not be advertised, with the exception of advertising for professional purposes or at the point of sale.

Section 9

(1) With the exception of advertising of pharmaceutical products for professional purposes (hereinafter referred to as: representation of pharmaceuticals), pharmaceuticals sold in pharmacies exclusively on a physician's prescription, or licensed for use exclusively in health institutions for hospitalized patients, or procurable exclusively by physicians' surgeries or welfare centers may not be advertised.

(2) Representation of pharmaceuticals shall mean the advertising or recommendation of pharmaceuticals defined in Subsection (1), or any information relating to the composition, effect or application of such pharmaceuticals targeted at such parties entitled to prescribe or market pharmaceuticals.

(3) Detailed rules for the representation of pharmaceuticals are contained in separate legal regulations.

Section 10

(1) With the exception of certain preparations prohibited on the basis of separate legal regulations, pharmaceuticals intended for human health care and sold over-the-counter in pharmacies, as well as medicinal preparations not qualifying as pharmaceuticals may be advertised, if the advertising:

- a. clearly defines that the product advertised is a pharmaceutical or medicinal preparation not qualifying as a pharmaceutical,
- b. contains the name and the usual international trade name of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical,
- c. encourages the proper use of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical,
- d. introduces the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical according to the recommended application defined in the course of registering or recording such pharmaceutical or medicinal preparation not qualifying as a pharmaceutical, respectively,
- e. contains the information necessary for the proper use of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical,
- f. contains an unequivocal warning of the necessity to read the patients' directions for use of the pharmaceuticals or medicinal preparation not qualifying as a pharmaceutical, as well as of any side effects of such pharmaceuticals or preparations.

(2) Advertising according to Subsection (1) may not contain any reference or expression which

- a. alludes to the lack of need for, or the possibility to omit medical examination, treatment or surgical intervention,
- b. creates the impression that the drug or medicinal preparation not qualifying as a pharmaceutical can be applied without any side effects, or will definitely lead to recovery,
- c. represents pharmaceuticals or medicinal preparations not qualifying as pharmaceuticals as cosmetics or foodstuffs,
- d. attributes the efficacy and safe use of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical exclusively to its natural origin,
- e. may result in improper self-diagnosis through describing or detailing the medical problem,
- f. shows an alteration due to a disease or injury, or the effect of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical on the human body or any part thereof in a way which generates a sense of fear or departs from reality,
- g. includes the recommendation of scientists, medical experts or well-known personalities,
- h. creates the impression that human health will be harmed without the application of the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical,
- i. alludes to the license to market the pharmaceutical or medicinal preparation not qualifying as a pharmaceutical.

(3) Advertising of pharmaceuticals may not be published if

- a. it is comparative,
- b. it contains narcotics or psychotropic materials, as defined in separate legal regulations,
- c. it contains pharmaceuticals for certain therapeutic areas, as defined in separate legal regulations,
- d. it presents a test preparation.

Section 11

Preparations applied in veterinary therapeutics may be advertised. The detailed rules governing the advertising of such goods shall be regulated in separate legal regulations.

Section 12

(1) Advertising of tobacco products or alcoholic beverages is prohibited

- a. in printed materials fundamentally targeted at children or juveniles,
- b. on the front cover of printed materials,
- c. in theaters or cinemas before 8 PM, as well as immediately preceding any programs for children or juveniles, during the full duration thereof, and immediately afterwards,
- d. on toys and the packaging thereof,
- e. in institutions of public education, in health institutions and within a distance of 200 meters from the entrance thereof.

(2) Tobacco products or alcoholic beverages may not be advertised if the advertising

- a. is targeted at children or juveniles,
- b. depicts children or juveniles,
- c. encourages extreme tobacco or alcohol consumption.

(3) Tobacco products may not be advertised if

- a. it represents smoking as a healthy activity,
- b. it portrays people smoking,
- c. it uses images or statements of well-known stars from the film, pop-music or entertainment trade.

Section 13

(1) Advertising of tobacco products in the press and on outdoor advertising media shall include a general warning with the following wording: "Smoking is extremely harmful to your health and your environment", as well as the data on the nicotine and tar content of such tobacco products.

(2) The advertising shall show the copy of the warning and the data defined in Subsection (1) in a clearly legible and distinctly visible form, in horizontal print, highlighted against the background, and, in the case of advertising in the press, in the language of the printed material in question, while in the case of outdoor advertising media, in the Hungarian language.

(3) The copy of the warning shall cover at least 10% of the area of the whole advertisement. The area covered by the warning shall be at least 20% of the area of the whole advertisement if the advertisement contains the warning in two or more languages.

Section 14

Rules of Establishing Responsibility

(1) The advertiser, the advertising service provider and the publisher of advertising shall all bear responsibility for violation of the provisions defined in Sections 3-5., Subsections (2)-(3) of Section 6., and Sections 8-13. of this Act. The advertiser, the advertising service provider and the publisher of advertising shall bear joint and several liability for any damage caused due to violation of these provisions.

(2) The advertiser shall bear responsibility for the contents and truth of

- a. the document presented on the basis of Subsection (1),
- b. the statement made on the basis of Subsection (2),
- c. the data as per Subsection (3) of Section 3. of this Act.

(3) The advertiser shall bear responsibility for violation of the provisions of Subsection (1) of Section 6., and Section 7. of this Act.

Section 15

Advertising Control Proceedings

(1) The Bureau of Consumer Affairs - and the county-level consumer protection inspectorates (or of the Capital) in the first instance - shall provide for the observance of the provisions relating to business advertising activity; and within this framework, shall undertake proceedings against any violation of such provisions.

(2) In the event that advertising conflicts with the provisions of UMPA, the court or the Office of Economic Competition shall proceed in accordance with the provisions of such Act.

(3) Proceedings in accordance with this Act shall not preclude the possibility that the party injured, in case his personal rights are infringed upon, may enforce his claim directly before court in accordance with the general rules of civil law. Should the amount of the possible indemnification under the rules of civil liability

not be commensurate with the severity of the misconduct, the court may also impose a penalty to be devoted to public purposes.

Section 16

(1) Advertising control proceedings may be initiated upon application or ex officio.

(2) Advertising control proceedings shall be initiated upon application in the event that a person's right or rightful interest is injured by a violation of any provision relating to business advertising activity. If the person of the consumer injured cannot be identified, or if enforcement of the claims is not expedient considering the number of consumers injured, public administrative bodies or social organizations providing for consumer interests shall also be entitled to initiate proceedings.

(3) Advertising control proceedings may not be initiated after a period of one year following the publication of the advertising infringing on the provisions relating to business advertising activity. Should the party concerned learn of the infringement of his personal rights after a period of one year, the provision set forth in Subsection (2) of Section 326 of Act IV of 1959 on the Civil Code of the Republic of Hungary shall apply accordingly to establish the deadline for initiating the proceedings.

Section 17

(1) In the course of the proceedings of the Bureau of Consumer Affairs or the consumer protection inspectorates, the provisions of Act IV of 1957 on the General Rules of Administrative Proceedings shall apply, with due consideration to the departures therefrom contained in Sections 18-19. of this Act.

(2) If the Office of Economic Competition proceeds on the basis of Subsection (2) of Section 15, the provisions of UMPA shall apply for such proceedings.

Section 18

(1) If the body responsible for the proceedings establishes that the advertising violates the law,

- a. it may order that such violation be terminated,
- b. it may prohibit continuation of the violation.

(2) The body responsible for the proceedings may impose a penalty on the party violating the law. In the event of repeated violations of the law, cumulative penalties may also be imposed.

(3) The amount of the penalty shall be established with respect to all circumstances of the case, including, in particular, the scope and severity of the offense against consumer interests, the duration of the violation of law, and any repeated violating conduct. Any penalties imposed on the basis of a final legal judgment and not paid shall be collected in the same way as taxes.

(4) Any penalties imposed against broadcasting service providers shall be paid to the Broadcasting Fund. In all other cases, penalties shall be paid to the credit of the bank account of the Bureau of Consumer Affairs.

Section 19

The body responsible for the proceedings may issue a temporary injunction prohibiting any further continuation of the violating conduct, or may order in such injunction that the violating status be terminated, if such action is urgently necessary for the protection of the legal or economic interests of the parties concerned.

Section 20

(1) Appeals lodged against the judgment of the consumer protection inspectorates in the first instance shall be judged by the director of the Bureau of Consumer Affairs. The director of the Bureau of Consumer Affairs may order that such judgment be executed with immediate effect.

(2) An action can be brought before court to review the judgment of the director of the Bureau of Consumer Affairs. In the course of the court proceedings initiated on the basis of such action at law, the provisions contained in Chapter XX of Act III of 1952 on Civil Procedure shall apply. The court may reverse the judgment made by the director of the Bureau of Consumer Affairs.

Section 21

Closing Provisions

(1) This Act shall enter into force on 1 September 1997.

(2) The provisions of Subsection (1) of Section 13 regarding the indication of data on the nicotine and tar content of tobacco products shall be applied as of 31 December 1998.

Section 22

(1) In regard to advertising published via radio or television broadcasting, the provisions contained in Act 1 of 1996 on Radio and Television Broadcasting shall apply in the event that such provisions establish requirements different from those set forth in this Act.

(2) A separate Act shall establish the rules governing the placement of outdoor advertising media.

Section 23

Simultaneously upon this Act entering into force,

- a. Section 6 of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices shall be replaced by the following provision:
"Section 6. Without the express prior consent of the competitor, goods or services (hereinafter jointly referred to as: goods) may not be produced, placed on the market or advertised with such typical outside appearance, packaging or marking (including the indication of origin); or any such name, marking or indication of goods may not be used by which the competitor or its goods are normally recognized."
- b. Section 84 of Act IV of 1959 on the Civil Code of the Republic of Hungary shall be supplemented with the following Subsection (3):
"(3) Such rules shall be authoritative even if the law was violated by virtue of publishing prohibited advertising."

Section 24

Simultaneously upon this Act entering into force,

- a. Subsection (2) of Section 3 of Act II of 1986 on the Press;
- b. Section 34 of Act 1 of 1978 on Domestic Commerce, as well as Section 18 of Law-Decree 18 of 1986 on the Amendment thereof;
- c. Subsection (4) of Section 59 of Act II of 1972 on Public Health;
- d. Section 7/A. of Government Decree 17/1968 (IV. 14.) Korm. on Certain Infractions, as well as Section 1 of Decree 19/1972 (VI. 5.) MT and Section 3 of Decree 15/1988 (III. 25.) MT on the Amendment thereof;
- e. the subtitle "Prohibition of Advertising Relating to the Sale of Alcoholic Beverages" and Subsection (2) of Section 10 of Decree 19/1977 (XII. 20.) BkM on the Restriction of Marketing Alcoholic Beverages;
- f. Decree 12/1972 (VI. 5.) BkM on Domestic Advertising Activity, Decree 10/1986 (X. 11.) BkM on the Amendment thereof, Decree 11/1989 (VI. 22.) KeM, the words "Section 8 of Decree 12/1972 (VI. 5.) BkM on Domestic Advertising Activity" in Subsection (2) of Section 11 of Decree 6/1992 (I. 28.) IKM, as well as Decree 14/1993 (IX. 2.) IKM;
- g. the words "advertise or" in Section 8 of Decree 2/1995 (I. 6.) MüM on Issuing Quality Certificates for Personal Protective Instruments are repealed.

Section 25

- a. The Minister of Public Welfare is hereby authorized to establish in a separate Decree the detailed rules governing the advertising of pharmaceuticals and medicinal preparations not qualifying as pharmaceuticals, the activity of drafting pharmaceutical descriptions and the registration of pharmaceutical descriptions, as well as the scope of official bodies acting as professional authorities in advertising control proceedings.
- b. The Minister of Agriculture is hereby authorized to establish in a separate Decree the detailed rules governing the advertising of pharmaceuticals applied in veterinary therapeutics.