



Circular 5/01: Circular to all Broadcasting Stations

Comparative Advertising

I would like to draw your attention to the provisions of articles 48 to 54 of the Consumers Affairs Act, Chapter 378 of the Laws of Malta, which were added recently by Act No. XXVI of 2000 and which articles have come into force on 1 st January 2001. The said articles read as follows.

Finally, for the purposes of the Consumers Affairs Act, " 'advertisement' means any form of representation, including a catalogue, a circular and a price list, about a trade, business, craft or profession in order to promote the supply or transfer of goods or services, immovable property, rights or obligations and 'advertising' shall be construed accordingly;"

Dr. Kevin Aquilina
Chief Executive
14th February 2001

48. (1) Any form of misleading advertising is prohibited.

(2) An advertisement is misleading if in any way, including its presentation, it deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and if by reason of its deceptive nature, it is likely to affect their economic behaviour or is one which for those reasons, injures or is likely to injure a competitor of the person whose interests the advertisement seeks to promote.

(3) In determining whether an advertisement is misleading account shall be taken of all its features, and in particular of any information it may have about -

- (a) the characteristics of goods or services, including their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity, specification, geographical or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;
- (b) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided;
- (c) the nature, attributes and rights of the advertiser, including his identity and assets, his qualifications and ownership of industrial, commercial or intellectual

Misleading
advertisements.
Added by:
XXVI. 2000.15.

property rights or any awards and distinctions made to him.

(4) Any person who makes a misleading advertisement shall be guilty of an offence against this Part of this Act.

Meaning of comparative advertising.
Added by:
XXVI. 2000.15.

49. (1) "Comparative advertising" means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

(2) Any person who makes an advertisement constituting comparative advertising other than as permitted under article 50 shall be guilty of an offence against this Act.

Permitted comparative advertising.
Added by:
XXVI. 2000.15.

50. (1) Comparative advertising shall, as far as the comparison is concerned, be permitted when the following conditions are met:

- (a) it is not a misleading advertisement in accordance with article 48 or otherwise;
- (b) it compares goods or services meeting the same needs or intended for the same purpose;
- (c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which features may include price;
- (d) it does not create confusion in the market place between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor;
- (e) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- (f) for products with designation of origin, it relates in each case to products with the same designation;
- (g) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products; and
- (h) it does not present goods or services as imitations or replicas of goods or services bearing a protected mark or trade name.

(2) Any comparison referring to a special offer shall indicate in a clear and unequivocal way the date on which the offer ends or, where appropriate, that the special offer is subject to the availability of the goods and services, and where the special offer has not yet begun the date of the period during which the special offer shall apply. "Special offer" in this subarticle refers to the price of the goods or services or any other specific condition under which the goods or services will be supplied.

51. A trader who, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, offers gifts, prizes, or other free items -

Offering gifts and prizes.
Added by:
XXVI. 2000.15.

- (a) fails to provide them or does not provide them as offered; or
- (b) fails to clearly disclose all the terms and conditions for obtaining them; or
- (c) fails to give a clear and full description of the gifts, prizes or other free items being offered;

shall be guilty of an offence against this Part of this Act.

52. (1) All forms of pyramid selling schemes however described shall be prohibited. Schemes or activities in which a significant or material element consists of a pyramid selling activity shall also be considered as a pyramid selling scheme for the purposes of this article.

Pyramid selling schemes.
Added by:
XXVI. 2000.15.

(2) A person who establishes, operates or promotes a pyramid selling scheme shall be guilty of an offence against this Part of this Act.

(3) For the purposes of this article, the term "pyramid selling scheme" means -

(a) a scheme -

that provides for the supply of goods or services or both for reward;

that to many participants in the scheme constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and

that is or is likely to be unfair to many of the participants in that scheme in that -

(i) the financial rewards of those participants are principally dependent on the recruitment of additional participants, whether or not at successively lower levels; and

(ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to the participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme; or

(b) a scheme of the type similar to a chain letter scheme, whether or not it provides for the supply of goods or services, that is unfair to many of the participants in the scheme in that -

(i) the financial rewards of many of the participants are dependant on the recruitment of additional participants; and

(ii) the number of additional participants in the

scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

(4) Participants, other than those referred to in subarticle (2), in any pyramid selling scheme shall be entitled not later than two years from the date on which they have made the last payment to demand a full refund of any monies paid by them into the scheme.

Misleading representations about certain schemes or activities.
Added by:
XXVI. 2000.15.

53. (1) A person who makes a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any work from home scheme or other similar schemes or activities however described and which that person represents as one that can be, or can be to a substantial extent, carried from a person's place of residence, shall be guilty of an offence against this Part of this Act.

(2) A person who invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in schemes or activities referred in subarticle (1) requiring -

- (a) the performance by the persons concerned of works; or
- (b) the investment of money by the persons concerned and the performance by them of work associated with the investment

and makes, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular, shall be guilty of an offence against this Part of this Act.

Offences.
Added by:
XXVI. 2000.15.

54. A person who is guilty of an offence against this Part of this Act shall on conviction be liable to a fine (*multa*) of not less than two hundred liri and not more than two thousand liri.