

[RO] New Act on Misleading and Comparative Advertising

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Act no. 202/2013 (The Act) for the modification and completion of Act no. 158/2008 regarding misleading and comparative advertising came into force on 6 July 2013. The Act had been adopted on 29 September 2012 by the Romanian Senate (upper chamber of the Parliament) and on 5 June 2013 by the Chamber of Deputies. It was published in the Official Journal of Romania no. 399 of 3 July 2013, Part I.

The modified and completed law complies with Directive 2006/114/EC concerning misleading and comparative advertising. The Act intends to assure the legislative coherence, to establish the competent authorities and to set the time limit for the submission of complaints relating to misleading and comparative advertising.

The new Law distinguishes between those authorities that may receive complaints from businesses and individuals in cases of misleading and comparative advertising. It was considered necessary to achieve a clear distinction between regulations protecting consumers' interests (individuals) and those relating to relations between economic operators (businesses). Businesses can head to the MFP and the CNA; individuals file their complaints with the ANPC.

The Autoritatea Națională pentru Protecția Consumatorilor (National Authority for Consumer Protection - ANPC) has been designated as the competent authority for the enforcement of the provisions concerning misleading and comparative advertising. According to Art. 7 (1) Law no. 202/2013 merchants, associations and organisations having a legitimate interest may notify the Ministerul Finanțelor Publice (Ministry of Public Finances - MFP) or, if applicable, the Consiliul Național al Audiovizualului (National Audiovisual Council - CNA).

Both the ANPC and the MFP can make a finding of breaches of the legal provisions and can impose sanctions stipulated in Art. 7 (3) and (4).

The MFP or the ANPC can request a trader to provide the necessary evidence regarding the accuracy of his statements, indications or presentations made in the context of his advertisement announcement, as stipulated in Art. 9 (1) of Law no. 202/2013.

According to Art. 18 (1) of Law no. 202/2013, a traders' complaint against legal breaches in the field has to be submitted within 3 months of the date on which persons, associations or organisations having a legitimate interest, have become aware of the advertisement but no later than 6 months after its appearance. The Law also establishes time limits for consumers' complaints relating to comparative advertising: 4 months as from the date of appearance.

According to Art. 19 (2) of Law no. 202/2013, the MFP, the ANPC or the CNA can notify professional organisations having a self-regulation role. The above quoted institutions can ask a reasoned opinion from the professional organisations that have a self-regulatory role.

Legea no. 202/2013 pentru modificarea și completarea Legii nr. 158/2008 privind publicitatea înșelătoare și publicitatea comparativă, Monitorul Oficial, Partea I nr. 399 din 3 iulie 2013

http://www.dreptonline.ro/legislatie/legea_202_2013_modificare_legea_158_2008_publicitatea_inselatoare_comparativa.php

