

**ITALY**

**STUDY ON THE IMPACT  
OF ADVERTISING AND TEleshopping  
ON MINORS**

- I. INTRODUCTION**
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## I. INTRODUCTION

The study on the impact of TV advertising and teleshopping on minors was carried out by International Research Associates (**INRA**) in collaboration for legal issues with the lawfirm **Bird & Bird Brussels**, for the 18 Member States of the European Union and the European Economic Area, and, for each country, in collaboration with a national lawfirm (a complete list is annexed to the study). For Italy, the study was carried out by the lawfirm **Studio Legale Carnelutti, Milan**.

The aim of the study was to identify and describe the national provisions on advertising provided in legislation, regulation and self-regulatory codes, which are applied to advertising in each State for the protection of minors. In addition, the national system for the handling of complaints was described fully, covering administrative, legal and self-regulatory measures.

For most countries it was possible to identify and to comment upon official proposals of law. In this respect, the information received from professional associations in the advertising sector was very helpful, as were the comments made by national authorities, who had been sent the draft reports by the Directorate General Education and Culture.

Finally in each national report the consultants indicated the way in which the provisions of the TVWF Directive (unofficial consolidated version), have been implemented in national legislation concerning TV advertising and teleshopping directed at minors. Nevertheless, in view of the objectives of the Commission and to enable comparison, the reports also cover other media such as radio, press, outdoor advertising, cinema, and Internet.

The study was carried out, realised and presented using an identical layout for each of the countries studied to achieve a harmonised readable approach, and facilitate comparison.

Therefore, as well as the main definitions and general rules in the field of advertising and teleshopping directed at minors, each national report contains the regulation by sector and by media, as well as an identification of specific marketing techniques. Moreover, each national report is preceded by a summary which gives the essential characteristics of the country in question. An Excell table has been drawn up, using the same layout for each country, as well as a comparative table for the 18 States studied.

Finally a report has been drawn up on European and international regulation and self-regulation concerning advertising directed at minors.

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## II. SUMMARY

The Italian law on TV-broadcasting of 6 August 1990 implements the TVWF Directive (modified 8 March 1999). Current proposals concern a Bill to ban all advertising during children's programmes and all sponsoring of children's programmes.

### 1. Definitions

According to the Civil Code, a minor or a child is an individual under the age of 18. The Criminal code distinguishes minors under 14 (who are considered as not being in full possession of their own faculties) and minors aged between 14 and 18.

The Advertising Self-regulatory Code (drafted by the IAP), based on the ICC code, is applied together with other specific codes. According to the Advertising Self-regulatory Code, a child is under 14 years old.

A definition of advertising can be found in the Legislative Decree of 25 January 1992, n°74 on advertising.

### 2. Regulation

#### a. General

The Legislative Decree of 25 January 1992 on advertising contains a special article about children (Article 6). The definition of misleading advertising with respect to children is wider than the general concept of misleading advertising. This article guarantees an appropriate protection to minors.

#### b. Media

Italy has implemented the TVWF Directive . The Commission has launched an infringement procedure, as the national legislation (Ministerial Decree of 8 March 1999) does not implement correctly the directive 97/36/EC. Some provisions of the national legislation are more restrictive than the TVWF Directive. The audiovisual legislation prohibits interrupting cartoons by advertising. In addition, films that cannot be shown to children under 14 cannot be broadcast between 7.00 a.m. and 10.30 p.m.

The rules on distance selling apply to teleshopping. There are no specific provisions regarding minors and sponsoring.

A radio programme must not cause moral or physical detriment to minors. Publications (addressed or not to children) may not harm children. There are no specific laws related to other media concerning minors.

### **c. Specific provisions**

Regarding alcohol, the audiovisual decrees contain provisions similar to Articles 13, 15 and 16 of the TVWF Directive. The advertising of alcohol is not regulated for other media.

Advertising for tobacco products on other media is authorised provided that certain conditions are met.

### **d. Other marketing techniques**

In Italy, direct marketing and sales promotions are covered by the regulations applicable to teleshopping and sponsorship.

## **3. Proposals of law**

A Bill aiming to ban all advertising during children's programmes and all sponsoring of children's programmes has been tabled in the Senate. In addition, the Senate's Special Committee on Infancy Affairs is currently carrying out an inquiry about "minors & TV".

## **4. Self-regulation**

In Spain the self-regulatory body (the Istituto dell'Autodisciplina Pubblicitaria, IAP) has an important role. The IAP enacted the Advertising Self-regulation Code, based on the ICC code. There are various codes (from private or public bodies: concerning the Internet, alcohol, toys, drugs, etc.) that concern minors in advertising (obligation of special care for advertising addressed to children, no messages likely to harm children mentally, morally, etc.).

The IAP Self-regulatory Code also deals with advertising in schools; for example the distribution of advertising material for teaching purposes.

## **5. Handling of complaints**

### **Authorities**

Any interested person (competitor, consumer, organisation and associations, Minister of Trade & Industry, other Minister or agency, etc.) is entitled to file a complaint before the Autorita Garante della Concorrenza e del Mercato. This

authority may prohibit the broadcast or order the withdrawal of the advertising, published decision or/and an amended notice (no compensation for damages may be granted). The decision is definitive, but appeal of the decision is permitted. The number of decisions for misleading advertising is also constant (around 10 per year).

The Civil Procedural Code covers the procedure: either on merit, or a summary procedure. Any person who has a legitimate interest is allowed to file such an action.

## **Self regulation**

There are two procedures: “on the merit” in front of the Giuri and a “summary procedure” in front of the Comitato di Controllo. Those bodies can order sanctions such as the cessation of the advertising and eventually the publishing of the decision (a full publication or a part of it. No compensation for damages can be granted. The sentence of the Giuri is final and cannot be appealed (unlike the decision of the Comitato di Controllo). The number of complaints for all matters remains constant(around 5 per year).



**III. REPORT**

**STUDY ON THE IMPACT  
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## I. DEFINITIONS

### **Majority**

Article 2 of the Civil Code: majority is fixed at fully 18 years. At that age one is capable of all acts except those for which a different age is prescribed<sup>1</sup>.

Special laws that provide for a younger age with respect to capacity to perform services are unaffected. In such case, the minor is capable of exercising the rights and the actions deriving from the employment contract.

### **Legal entitlement to contract**

Minors are incapable of contracting because they are incapable of validly performing legal actions in order to purchase or exercise rights or assume obligations.

Articles 1425 and 1426 of the Civil Code: the contract executed by the minor is declared void unless the minor, by subterfuge, has concealed his minority. In such case, a simple declaration of the minor attesting his majority does not prevent to the legal representative of the minor or the minor himself from starting annulment proceedings.

Article 1443 of the Civil Code: if the contract executed by the minor is annulled, the minor is not obliged to return to the other party what he has received except to the extent to which he has benefited by the performance of the contract.

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<sup>1</sup> Article 84 paragraph 1 of Civil Code: “*Minors cannot contract marriage. The tribunal, upon request of the interested party, having determined his psycho-physical maturity and the validity of the reasons submitted, having heard the public prosecutor, the parents or the guardian, can, by a decree issued in chambers, permit for serious reasons the marriage of a person over sixteen years*”.

Article 250 paragraph 5 of Civil Code: “The acknowledgement of an illegitimate minor cannot be made by parents under the age of sixteen”.

Article 291 paragraph 1 of Civil Code: “*Adoption is permitted by persons who do not have legitimate or legitimated descendants, who are already thirty-five and who are at least eighteen years older than the persons they intend to adopt*”.

Article 774 paragraph 1 of Civil Code: “*The persons who do not have full capacity to dispose of their own property cannot make gifts. Notwithstanding, a gift made by a minor or a disabled person in his or her contract of marriage according to articles 165 and 165 is valid*”.

Article 108 of the copyright law no. 633 of 22<sup>nd</sup> April 1941: “*The author being sixteen years old is capable to perform all acts regarding the works conceived by the same and to exercise the rights deriving therefrom*”.

Article 320 of the Civil Code: the parents jointly represent the minor in all civil acts and manage his property<sup>2</sup>. Administration acts in the ordinary course, excluding contracts by which personal rights of enjoyment are assigned or acquired, can be performed severally by each parent. The parents cannot transfer, mortgage or pledge the property received by the minor under any circumstances, even *mortis causae*, accept or renounce inheritances or legacies, accept gifts, proceed with the dissolution of common ownership, contract loans or leases for a term exceeding nine years or perform other acts beyond the limits of administration in the ordinary course or start, compromise or refer to arbitration actions in relation to such acts, except in case of necessity or for the obvious advantage of the minor after authorisation of the tutelary judge. Amounts cannot be collected without the authorisation of the tutelary judge who determines the terms under which they shall be invested. The conduct of a business cannot be continued except with the authorisation of the tribunal, upon the opinion of the tutelary judge. A minor can be authorised by the judicial tutorship.

Article 343 of the Civil Code: if both parents are dead or cannot exercise paternal authority for any reasons, a guardian is appointed by the tutelary judge.

Article 374 of the Civil Code: the guardian cannot, without the prior authorisation of the judge (tutelary judge):

- 1) acquire property, except movable items which are necessary for the use of the minor, for household purposes, and for administration of the minor's assets;
- 2) collect amounts, consent to the cancellation of mortgages or the release of pledges, assume obligations, except for the obligations concerning expenses necessary for the maintenance of the minor and for the administration of his assets in the ordinary course of business;
- 3) accept or renounce inheritances, accept gifts or legacies subject to encumbrances or conditions;

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<sup>2</sup> Article 316 of the Civil Code: “... *In case of disagreement on questions of particular importance each parent can apply without formalities to the judge indicating the measures which he deems most appropriate. If there is an incumbent danger of serious prejudice to the minor, the father can adopt urgent and immediate measures. The judge, after hearing the parents and the minor, if the minor is over fourteen years, suggests the decisions which he deems most convenient in the interest of the minor and of family unity. If the disagreement continues, the judge attributes the power to decide to the parent who, on his opinion, is more qualified to take care of the interest of the minor*”.

- 4) enter into leases of immovable items for a term exceeding nine years or, in any case, one year after the minor reaches the majority;
- 5) start proceedings, except for actions for possession or evictions, and actions for the collection of earnings or to obtain precautionary measures.

Article 375 of the Civil Code: the guardian cannot, without the authorisation of the Court:

- 1) transfer property, except earnings and movable items subject to easy deterioration;
- 2) grant pledges or mortgages;
- 3) execute divisions of property;
- 4) execute arbitration agreements and compromise settlements or accept composition with creditors.

The authorisation is given by the Court upon a hearing with the tutelary judge.

### **Protection of youth**

Law 27<sup>th</sup> May 1991 no 176 ratifying and implementing the Convention on the children rights executed in New York on 20<sup>th</sup> November 1989<sup>3</sup>.

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<sup>3</sup> Article 17 of the Convention on the children rights executed in New York on 20<sup>th</sup> November 1989: “*The member States recognise the importance of the mass media, but maintain controls so that a child can access information and materials originating from various national and international sources, especially if they are for the purpose of promoting the child's social, spiritual and moral well-being, as well as his/her mental and physical health. To these ends, the member States:*

- a) *Encourage the mass media to distribute information and materials which are of social or cultural value to children and which are in accord with the essence of article 29;*
- b) *Encourage international co-operation in producing, exchanging, and distributing information and materials of this type, originating from various cultural, national and international sources;*
- c) *Encourage the production and distribution of children's books;*
- d) *Encourage the mass media to especially consider the language needs of autistic? children and minority groups;*
- e) *Approve the elaboration of legislature destined to protect children from information and materials which could be harmful to their well-being and which are in accord with the provisions in articles 13 and 18.*

Article 31 paragraph 2 of the Italian Constitution

The Italian Republic protects the childhood and the youth, favouring the institutions necessary for this purpose.

Provisions of the Criminal Code:

Articles 97 and 98 of the Criminal Code

Minors under fourteen years old are not liable for crimes because they are considered as not being in full possession of their own faculties (absolute presumption).

The liability of minors aged between fourteen and eighteen years old must be ascertained case by case.

Article 600 bis of the Criminal Code<sup>4</sup> - Juvenile Prostitution

Whoever introduces a child who is under the age of eighteen to prostitution or encourages or profits from prostitution is punished with the imprisonment for a term of between six to twelve years and with a fine of between 30 million lire up to 300 million lire. Whoever commits sexual acts with children aged between fourteen years old and sixteen years old, in exchange for money or other economic benefits, is punished with the imprisonment for a term of between six months to three years with a fine of not less than ten million lire. The imprisonment term is reduced by a third if the crime is committed by a person under the age of eighteen years old.

Article 600 ter of the Criminal Code<sup>5</sup> – Juvenile pornography

Whoever exploits minors under the age of eighteen in order to exhibit pornographic material or produce pornographic material is punished with the imprisonment for a term of between six to twelve years and with a fine of between fifty million lire and five hundred million lire. The same punishment applies also to those who deal in pornographic material as described above. Anybody who, besides from the cases mentioned in the first and second clause, by whatever means, even by telephone; distributes; divulges; or publishes pornographic material as in clause 1, as well as distributes or divulges news or information with the purpose of sexually exploiting children under the age of

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<sup>4</sup> Introduced by Law 269/98.

<sup>5</sup> Introduced by Law 269/98.

eighteen years old, is punished with the imprisonment for a term of between one and five years and with a fine of between five million lire and one hundred million lire. Whoever, besides from the cases mentioned in the first, second and third clauses, knowingly gives to others, even freely, pornographic material produced by means of the sexual exploitation of persons under the age of eighteen, is punished with the imprisonment for a maximum term of three years and with a fine of between three million lire and ten million lire.



### Article 600 quarter of the Criminal Code<sup>6</sup> – Possession of pornographic material

Whoever, apart from those included in article 600 ter of the Criminal Code, knowingly buys or holds pornographic material produced by means of sexually exploiting children under the age of eighteen, is punished with the imprisonment for a maximum term of three years and with a fine of not less than three million lire.

### Article 600 quinquies of the Criminal Code<sup>7</sup> - Tourism involved in the exploitation of juvenile prostitution

Whoever organises or advertises holidays in order to take advantage of juvenile prostitution damaging children or in any case takes part in the said activity is punished with the imprisonment for a term between six and twelve years and with a fine of between thirty million lire up to three hundred million lire.

### Article 601 of the Criminal Code last paragraph<sup>8</sup> – Trading of Minors

Whoever is involved in the trade or anyhow, whoever deals in the selling of children under the age of eighteen wanting them to end up in the world of prostitution is punished with the imprisonment for a term of between six years up to twenty years.

### Article 519 of the Criminal Code - Violent Sexual Crime

Whoever, by using violence or threats, forces someone to submit to sexual acts is punished with imprisonment of between three to ten years.

The same punishment occurs when sexual acts are carried out when the other person involved is at that time:

- 1) not over the age of fourteen years old;
- 2) not yet over the age of sixteen, when the guilty party is a relation, or a guardian, or even another person who has been left in charge of the child for health reasons, education tutoring, security or in custody of the child.

### Article 528 of the Criminal Code - Publication of obscene material

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<sup>6</sup> Introduced by Law 269/98.

<sup>7</sup> Introduced by Law 269/98.

<sup>8</sup> Introduced by Law 269/98.

Whoever, wants to sell or distribute or even publicise, produce or introduce into the Country, buy, detain, export or put into written circulation, drawings, images or other obscene material of whatever form, is punished with the imprisonment of between three months and three years with a fine of not less than two hundred thousand lire.

The same punishment applies to anyone who sells, even secretly, the objects in the paragraph here above mentioned, or even who distributes and shows them publicly.

Such punishment is applied to anyone who:

- 1) adopts whatever means of advertising in order to circulate or deal in the above mentioned objects;
- 2) gives performances in a public theatre or cinema, or even auditions or gives recitations in public of material which is characteristically obscene.

In the case mentioned in point 2), the punishment increases if the crime is committed even when it is prohibited by the authorities.

#### Article 570 of the Criminal Code - Violation of the obligation of assistance in the family

Whoever, abandons the family home, or in any case demonstrates unusual behaviour regarding the moral and ordinary state of the family, taking away the obligation of assistance deriving from the parent or as quality of guardians is punished with imprisonment of up to one year or with a fine of between two hundred thousand lire and two million lire.

The said punishment is applied to whoever:

- 1) mistreats or squanders the assets of a child [c.c. 2] (5) or of the partner/wife/husband;
- 2) fails to provide the means of subsistence for under aged children [540; c.c. 75] [c.c. 2], or even the inability to work, of relatives or of partners/wife/husband, who is not legally separated for fault of their own (6).

#### Article 571 of the Criminal Code - Abuse of means of punishment or of discipline

Whoever abuses the responsibility entrusted to him for reasons of education, instruction, health care, security or custody, or otherwise in the exercising of a

profession or of an art, is punished, if there is a risk of mental or physical damage, with imprisonment of up to six months (1).

Article 572 of the Criminal Code - Maltreatment in the family or of children

Whoever, apart from those cases indicated in the previous article, mistreats a person in the family, or a child under the age of fourteen years old, or a person under their authority, or who has been entrusted for reasons of education, instruction, health care, security or custody, or otherwise for the exercising of a profession or of an art, is punished with imprisonment of between one and five years.

### Article 573 of the Criminal Code - Consensual Removal of Children

Whoever removes a child, who has had his or her fourteenth birthday, with the consent from the responsible parent or a guardian, or otherwise who restrains a child against the will of the parent or guardian is punished. The culprit may be punished with imprisonment of up to two years.

The punishment is decreased, if the crime is committed because of a resulting marriage; and increased if the crime is committed for reason valid in law.

### Article 574 of the Criminal Code - Removal of incapable persons

Whoever removes or restrains a child of under fourteen years of age or a child who is mentally handicapped, against the will of the responsible parent the guardian, carer, or whomever is in charge of the child, is punished with the imprisonment of between one to three years.

The same punishment applies to anyone who removes or keeps a child who is fourteen or above, without the consent of the child for reasons other than of pleasure.

### Article 591 of the Criminal Code - Abandonment of under age children and those being handicapped

Whoever abandons a child under the age of fourteen years old, or even a handicapped person, for reasons of mental illness or physical illness, for old age or for other reasons that the person is unable to look after themselves, who has the person in custody or in rehabilitation, is punished with imprisonment of between six months and five years.

### Article 593 of the Criminal Code - Failure to offer assistance

Whoever, upon finding a abandoned or lost child under the age of ten years old, or another person incapable of looking after themselves, for reasons of mental health or physical health, for old age or for other reasons, who fails to immediately contact the local authorities is punished with imprisonment of up to three months or with a fine up to six hundred thousand lire.

### Article 643 of the Criminal Code - Circumvention of incapable persons

Whoever, personally gains and profits for himself or for others, abusing the needs, the passions or inexperience of an under age person, or otherwise abuses of the fact that the person is mentally unstable or physically weak, making them

carry out an act which could have a damaging legal effect against either themselves or against other people, is punished with imprisonment of between two to six years with a fine of between four hundred thousand and four million lire.

#### Article 671 of the Criminal Code - Employment of under age children

Whoever in authority, uses for begging, a child under the age of fourteen or anyhow, is incapable, which the person has been entrusted or put under their care, permits such child to beg or use other means to earn/beg, is punished with imprisonment of between three months and one year.

If the crime is committed by the parent or of the guardian, the punishment involves the taking away of the parental right of influence from the parent or guardian of the child.

#### Article 689 of the Criminal Code - Administration of alcoholic drinks to under age children or the mentally unstable

Those in the restaurant business or other public places open to the public who sell food and drink, to children under the age of sixteen or those suffering from mental illness, or those who find themselves in a state of physical weakness caused by another factor, is punished with imprisonment of up to one year.

If drunkenness derives from the above, then the punishment is increased.  
The conviction involves the suspension of the right to exercise their business.

#### Article 730 of the Criminal Code - Administration of toxic substances and harmful foods to under age children

Whoever is authorised in the selling or dealing of medicines, and provides to a child under the age of sixteen poisonous substances or drugs, even with a prescription from the Doctor is punished with a fine of up to one million lire.

There is also a fine of up to two hundred thousand lire for those who sell or administer tobacco/cigarettes to children under the age of fourteen years old.

#### Article 731 of the Criminal Code - Inadvertence of the obligation to provide a decent elementary diet to an under aged child

Whoever, in authority or in charge of the looking after of a child fails, without just cause, to provide the correct elementary diet is punished with a fine of seventy thousand lire.

#### Article 732 of the Criminal Code - Omitted Introduction of under age children to the work place

Whoever, in authority or in charge of the looking after of a child who has had his fourteenth birthday and must begin work to maintain himself, omits, without just cause, to send him to work, is punished with a fine of up to seventy thousand lire.

## **II. REGULATION**

### **1. Classification by media**

#### **1.1. All media**

In a general way, advertising may not be deceitful nor mislead the consumer on the product or service, nor be denigrating.

According to article 6 of Legislative Decree 25 January 1992 no. 74 , implementing the Directive 84/450/EEC on misleading advertising, advertising is considered misleading, when, it is susceptible in reaching children and adolescents, and creates even indirectly, a threat to their security or abuses their natural beliefs or lack of experience or which employment of children and adolescents in advertising campaigns must avoid abusing the natural sentiments of adults towards youngsters.

The notion of misleading advertising contemplated in the above article in relation to minors is wider than the general notion of misleading advertising provided for in article 2 letter b) of Legislative Decree 25 January 1992 no. 74, which defines as misleading any advertising, which in any way, including the presentation, wrongly persuade or could wrongly persuade the actual person or judicial to which it is aimed, being caused by its misleading characteristics, in prejudicing their economic administration or for this reason, damage or prejudice a competitor.

In particular, the reference to the indirect menace contained in the article 6 of Legislative Decree 25 January 1992 no. 74 permits to attack a large number of advertisers in order to guarantee the most appropriate protection to subjects as minors who develop and exercise a lower critical sense towards the advertisement and who are easily subject to the influence of such mean.

#### **1.2. Television**

Italy has implemented the EU Directive “Television without Frontiers” in its national law. This law is even more restrictive including prohibitions on advertising during cartoon programmes. Further restrictions are contained in IAP Code (see infra).



Article 8 paragraph 1 of Law 6 August 1990 no. 223.

Television advertisements must not offend a person's dignity nor encourage discrimination of race, sex, nationality, religion or ideals; must not encourage behaviour which may be harmful to a person's health, security or the environment and must not cause moral or physical detriment to minors. Such rules also apply for radio.

It is prohibited to insert advertisements in cartoons.

Article 3 of the Ministerial Decree 30 November 1991 no. 425 has implemented the article 16 of the Directive 89/552/CEE of 3 October 1989 on the co-ordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities<sup>9</sup>.

It provides that television advertising, in order to prevent any moral or physical detriment to minors shall not:

- a) directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;
- b) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;
- c) exploit the special trust minors place in parents, teachers or other persons;
- d) unreasonably show minors in dangerous situations.

Article 8 paragraph 1 of Law 6 August 1990 no. 223 forbidding the introduction of advertising in the cartoons is more restrictive than the provision contained in article 11 paragraph 5 of the above mentioned Directive, pursuant to which "news and current affairs programmes, documentaries, religious programmes and children's programmes, when their programmed duration is less than 30 minutes shall not be interrupted by advertisements.

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<sup>9</sup> Such Directive was amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997. The Ministerial Decree 8 March 1999 published in the Official Gazette of 12 March 1999 was considered insufficient for the implementation of the Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997. An infringement proceedings has been started by the Commission of the European Community before the Court of Justice of the European Community.

In failure of an expressed provision in the mentioned article 8 paragraph 1 with respect to the children's programmes, the general rules contained in article 11 paragraphs 3 and 4 of the Directive 89/552/CE shall apply to such programmes.

In particular, the transmission of audio-visual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their programmed duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their programmed duration is at least 20 minutes longer than two or more complete periods of 45 minutes. Where programmes, other than those consisting of autonomous parts, or sports programmes and similarly structured events, are interrupted by advertisements, a period of at least 20 minutes should elapse between each successive advertising break within the programme.

Compliance with the provisions set forth in the article 8 of Law 6 August 1990 no. 223 is supervised by the *Autorità per le garanzie nelle comunicazioni* and subject to the administrative proceedings provided for in article 31 of such law.

The breach of such provisions is punished with an administrative sanction consisting of the payment of an amount of between 10 million lire up to 100 million lire and, in the most severe cases, the suspension of the licence for a term of between 1 day up to 10 days (article 31 paragraph 3 of Law 6 August 1990 no. 223).

#### Article 15 paragraphs 10, 11 and 13 of Law 6 August 1990 no. 223

The transmission of programs which can be psychologically or morally harmful to minors, which contain scenes of violence or pornography or which encourage discrimination of race, sex, religion or nationality are prohibited. Such provision implements the article 22 of the Directive 89/552/CEE<sup>10</sup>

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<sup>10</sup> Article 22 of the Directive 89/552/CEE: "Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. This provision shall extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will normally hear or see such broadcasts.

Member States shall also ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

Films which are forbidden to children under age 14 cannot be broadcast either fully or partially between 7:00 a.m. and 10:30 p.m.

Article 5, agreement between the Minister of the communication and the Rai (29 October 1997)

According to the agreement, the Public broadcaster undertakes to produce programmes for children and young people, with regard to their sensibility and evolution. It undertakes to monitor the content of the messages, the moment of the broadcasting as well as the characteristics of the broadcasting of the advertising.

Article 3, al 5, of law 30 April 1998:

Advertising and teleshopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping.

Chapter "Children and TV" of the decree 13 June 2000

The Government wishes the Public radio and TV broadcaster do their best effort to guarantee a programme of a very good quality (educational, etc). The Public radio and TV Broadcaster must promote programmes that makes the difference between the children, the pre-adolescent and the adolescents. The institute for the protection of the children's and adolescent's rights, foresees a unique signal for the interruption for advertising recognisable on all network during all programmes for children.

See also self-regulatory rules.

### **1.2.1. Teleshopping**

Article 9-bis of Law 6 August 1990 no. 223

Such article defines teleshopping as *"television offers made directly to the public for the purpose of selling, purchasing, hiring products or for the provision of services."*

From a legal point of view, teleshopping is similar to distance sales as it is present in programmes where the presenter, in addition to proposing the purchase of products (which, if accepted gives rise to an equal number of purchase and sales contracts) also outlines the positive features of offered products.

Provisions of Law decree no. 185 of 22 May 1999 on distance sales implementing the Directive 97/7/EC therefore apply to telesales as well as the provisions on advertisement contained in Legislative Decree no. 74 of 25 January 1992 and notably the principle that it must not be misleading. Indeed, products offered through teleshopping during television programmes must be accurately described, with no ambiguity; price, warranty and supply methods need to be specified.

D.Lgs. 22 May 1999 no. 185

D.Lgs 185/1999<sup>11</sup> has the aim to protect consumers from obligations undertaken without a proper knowledge and awareness of the essential information concerning the purchased goods or services and without the time usually needed to take a decision. To achieve said purposes D.Lgs.185/99 states that in good time prior to the conclusion of any distance contract, the consumer has to be provided with certain information and namely:

- (a) the identity of the supplier and, in the case of contracts requiring payment in advance, his address;
- (b) the main characteristics of the goods or services;
- (c) the price of the goods or services including all taxes;
- (d) delivery costs;
- (e) the arrangements for payment, delivery or performance;
- (f) the existence of a right of withdrawal, except in the cases referred to in Article 5 (3)<sup>12</sup>;

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<sup>11</sup>Legislative Decree no. 185/99 definition of distance contract is “*means any contract concerning goods or services concluded between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded*” and mean of distance communication “*any means which, without the simultaneous physical presence of the supplier and the consumer, may be used for the conclusion of a contract between those parties*” that are exactly the same definitions used in the EC Directive n. 7/97.

<sup>12</sup> Art 5 (3) -Right of withdrawal- states that: “*Unless the parties have agreed otherwise, the consumer may not exercise the right of withdrawal provided for in paragraphs 1 and 2 in respect of contracts:*

- a) for the provision of services if performance has begun, with the consumer's agreement, before the end of the ten working day period referred to in paragraph 1,*
- b) for the supply of goods or services the price of which is dependent on fluctuations in the financial market which cannot be controlled by the supplier,*
- c) for the supply of goods made to the consumer's specifications or clearly personalized or which, by reason of their nature, cannot be returned or are liable to deteriorate or expire rapidly,*

- (g) the arrangements for returning the goods in case of exercise of the right of withdrawal;
- (h) the cost of using the means of distance communication, where it is calculated other than at the basic rate;
- (i) the period for which the offer or the price remains valid;
- (j) where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.

The above information shall be provided in a clear and comprehensible manner in any way appropriate to the means of distance communication used, with due regard to the principles of good faith and fairness in commercial transactions to be evaluated making reference to the standards of protection applicable to the weakest categories of consumers.

Moreover the consumer must receive prior to the conclusion of the contract or at the latest during the performance of the contract written confirmation or confirmation in another durable medium available and accessible to him.

D.Lgs. no. 185/99, taking into consideration that the consumer is not actually able to verify the quality of the product or ascertain the nature of the service provided, also states a right of withdrawal to be exercised by the consumer within ten working days from the day of receipt of the good (or in case of services, from the day of conclusion of the contract).. The withdrawing consumer does not have to pay any penalty or give any reason . The 10 day period is automatically extended to a three month period in case the supplier did not provide the consumer with the information above listed. Where the right of withdrawal has been exercised by the consumer the supplier shall be obliged to reimburse, free of charge, the sums paid by the consumer.

In respect of the performance of the contract, the supplier must execute the order within a maximum of 30 days from the day following that on which the consumer forwarded his order to the supplier, the supplier and the consumer may agree a different term for the execution of the order.

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- d) *for the supply of audio or video recordings or computer software which were unsealed by the consumer,*
  - e) *for the supply of newspapers, periodicals and magazines,*
  - f) *for gaming and lottery services.”*

In case of non-performance of the contract on the supplier's side due to unavailability (even if temporary) of the goods or of the services, the supplier within the above 30 day term informs the consumer of the situation and reimburses the sum possibly already paid by the consumer. Unless the consumer has given its consent prior to or at the conclusion of the contract, the supplier may not perform its obligations by providing different goods or services of the same or of superior quality and price.

The consumer may pay by card if this mean of payment is provided for in the contract.

In case of payment exceeding the amount agreed upon by the parties or in the event of fraudulent use of the payment card or by a third party the issuer of the payment card shall re-credit the consumer the sums paid.

Article 11 of the Ministerial Decree 9 December 1993 no. 581.

A special care must be taken for the content of the messages broadcasted and addressed to minors. The message shall not include any element that might cause psychological, moral or physical detriment to minors. The message shall not exploit their inexperience, credulity or loyalty. In particular, advertising shall not :

- infringe social behaviour's rules that are generally accepted,
- encourage children to carry out dangerous actions,
- present the non possession of the advertised product as a negative element,
- directly encourage minors to persuade their parents or other to purchase the goods or services being advertised.

The use of children or young people in advertising must avoid all abuse of the natural feelings of the adults for younger people.

### **1.2.2. TV Sponsorship**

Article 12 of the Ministerial Decree 9 December 1993 no. 581

It defines television sponsorship as the *“display of products, the verbal or visual presentation of goods, name, trademark or business of a manufacturer or service provider by the channel for the purpose of promoting the supply or rendering – against a consideration – of goods or services, within a program.”*

Article 13 of the Ministerial Decree 9 December 1993 no. 581.

Sales promotion cannot be introduced in the television news, newsletters and consulting programs aimed to consumers and like any other form of advertising, they must be recognisable as such and clearly distinguishable from the rest of the program by means of displaying in writing "promotional message" for its entire duration.

The ban on subliminal advertising is applicable, that is the principle according to which advertisement must be manifest, truthful and correct; the provisions of Legislative Decree no. 74, of 25 January 1992, on misleading and comparative advertisement also apply.

### **1.3. Radio**

Article 8 paragraph 1 of Law 6 August 1990 no. 223.

Radio advertisements must not offend a person's dignity nor encourage discrimination of race, sex, nationality, religion or ideals; must not encourage behaviour which may be harmful to a person's health, security or the environment and must not cause moral or physical detriment to minors.

### **1.4. Press**

Article 14 of Law 8 February 1948 no. 47.

Such article extends the application of the provisions set forth in article 528 of the Criminal Code to

publications aimed at children which, for sensitivity and susceptible nature of the same, are suitable in offending their sense of morale and to create a feeling of corruption, for committing a crime or committing suicide;

newspapers and magazines aimed at children, in which the description or illustrations are based on the police force, which systematically or repeatedly favour violent instincts and social misconduct.

The observance of the provisions set forth in the Law 8 February 1948 no. 47 is under the control of the *Autorità garante della concorrenza e del mercato*.

The breach of the measures adopted by the *Autorità garante della concorrenza e del mercato* is criminally punished as contravention.

### **1.5. Posters**

No specific rules for posters are set forth by the Italian legislation.

### **1.6. Motion pictures**

Article 15 paragraphs 10, 11 and 12 of Law 6 August 1990 no. 223

It is prohibited to broadcast programmes that might harm the moral or physical development of the minor, that contains free violence or pornographic scenes.



It is prohibited to broadcast films for which *nulla osta* for public viewing or representation have been denied or which are prohibited to children under 18.

In case of violation of such prohibition, the sanctions (a fine of between ITL 80.000 up to ITL 4.000.000 and the shut-down of the installation) provided for in article 15 of law n. 161 of 21 April 1962 will be applied, in addition to the administrative sanction provided for in article 31 of Law 6 August 1990 no. 223.

## **1.7. Internet**

See self-regulatory rules.

## **2. Specific rules: classification by sector**

### **2.1. ALCOHOL**

#### **2.1.1. Rules on advertising**

Article 2 of the Ministerial Decree 30 November 1991 no 425 containing the regulations implementing the articles 13, 15 and 16 of the Directive 89/552/CEE of 3 October 1989 concerning the television advertising for tobacco products, for alcoholic beverages and the minors protection.

The television advertising of alcoholic beverages shall not

- (a) be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) link the consumption of alcohol to enhanced physical performance or to driving;
- (c) create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

(f) place emphasis on high alcoholic content as being a positive quality of the beverages.

See also self-regulatory rules.

## **2.2. TOBACCO**

### **2.2.1. Rules on advertising**

Article 1 of the Ministerial Decree 30 November 1991 no 425 containing the regulations implementing the articles 13, 15 and 16 of the Directive 89/552/CEE of 3 October 1989 concerning the television advertising for tobacco products, for alcoholic beverages and the minors protection.

Television advertising for cigarettes and other tobacco products is prohibited even if it is indirectly performed by using names, trademarks, symbols or other elements proper to tobacco products or companies whose main activities consist of the production or sales of such products in all cases in which such use is suitable, for forms, modalities and means utilised, to promote the advertising of same products.

No specific provision is set forth for minors.

See also self-regulatory rules.

## **3. Proposals of legislation on advertising directed at children**

A legislative proposal which inter alia bans advertising during children's programmes, and the sponsoring of these programmes, is on the agenda of the Italian Senate.

In May 2000, an amendment was presented to introduce these bans to the *Legge Comunitaria 2000*.

In addition the Senate's Special Committee on Infancy Affairs is currently holding an inquiry into "Minors & TV", and is supportive of a ban on advertising to children.

There is the proposal of decree of 6 July 2000, n°4716/S regarding the protection of the minor in the use of the mass communication media. This proposal is being examine by the Parliament. The recipients of the decree are the TV broadcasters, the radio broadcasters, the information, video and audiocassette, magnetic media and the responsible of the broadcasting of the message. The proposal set the respect of the self-regulation codes.

### **III. SELF-REGULATION**

#### **1. General rules**

Preliminary note : the EU Misleading Advertising Directive is implemented by a law of 1992 which expressly recognises the role of the self-regulatory system.

#### **Article 11 of the Advertising Self-Regulation Code**

This code is based on the ICC Code. The code has been adapted to Italian requirements and is in some ways stricter than the ICC Code. According to this code of self regulation, a child is under 14 years old.

Particular care must be taken in the advertisements aimed at children and adolescents or which they could obtain.

These advertisements must not contain anything, which could cause mental, physical or morale damage, and above all must not abuse their natural beliefs or lack of experience or of their sense of fairness.

In particular these advertisements must not create:

- violation of normal generally accepted social behaviour;
- actions or exposure to dangerous situations;
- a feeling of inferiority if not in possession of the product advertised, or make the parents feel that they are not provided properly for the child;
- a situation of making other people buy the product which is advertised.

Employment of children and adolescents in advertising campaigns must avoid abusing the natural sentiments of adults for youngsters.

#### **2. Classification by media**

##### **2.1. TELEVISION**

- TV advertising is regulated by both public and private regulatory bodies. Messages must be in accordance with the Code of Advertising self-regulation and respect internal rules for Commercial Fininvest TV (Code on

TV and Minors) and for state television (advertising is checked by SACIS, a RAI associate company).

- The radio & Television Federation (RTF) has Codes of Practice which control children's advertising. The Code states that :
  - Special care must be taken with advertisements directed to, or likely to be seen by, children and youngsters,
  - Advertisements may not contain any messages likely to damage children mentally, morally or physically,
  - Advertisements may not abuse children's natural credulity, lack of experience or sense of loyalty,
  - Advertisements must not make children believe they are inferior for not owning a product or encourage them to ask other people to purchase that product.

## **2.2. INTERNET**

### Article 4 c) of the project of the Self-Regulation Code for internet services

The minors' protection imposes the refusal of all forms of exploitation , in particular those having sexual nature, and of all communications and information which can exploit their credulity; besides, the respect of the minors' sensibility imposes particular prudence in the disclosure to the public of potentially dangerous contents.

## **3. Classification by sector**

### **3.1 ALCOHOL**

#### Article 22 of the Advertising Self-Regulation Code

Publicity of alcoholic beverages must not contrast with the necessity of favouring the achievement of the article of consumption inspired by measurement, correctness and responsibility.

In particular the product must refrain from:

encouraging excessive and uncontrolled usage, which is therefore damaging, of alcoholic drinks;  
demonstrating situations of addiction to the product, in general, the dependency of alcohol;  
contacting or referral, also indirectly, to under aged children;  
associating the use of alcohol with the driving of a vehicle;  
persuading the public that the use of alcoholic drinks contributes to mental awareness and physical prowess and that ceasing to use the product creates a mental, physical and social inferiority;  
persuading the public not to take care in the way the product is consumed, which is necessary in relation to the personal characteristics of the consumer, depending on the individual product;  
use the percentage of alcohol present in the drink as the principle advertising indication of the product.

### **3.2 GAMES AND TOYS FOR CHILDREN**

#### Art. 28 bis of the Advertising Self-Regulation Code

Commercials relating to games and toys for children must not be misleading:

- regarding the size and functions of the advertised product;
- regarding the level of capability needed to use the product;
- regarding cost, especially if the product requires the purchase of supplementary products for proper use.

In any case, the commercial must not minimise the cost of the product or lead consumers to believe that its purchase is compatible with any family budget.

### **3.3 DRUGS**

#### Art. 25 Medicinal product & Curative Treatments

This section also refers to children.

### **3.4 COMMERCIAL ACTIVITIES IN SCHOOLS**

Article 11 of the IAP's Code has guidelines on Children and Adolescents within the framework of advertising.

A specific rule, Art. 28 bis, deals with "games, toys and educational products for children".

In the Preliminary and General Rules of the Code, Point e) Definitions, states that the distribution of advertising material for teaching purposes is not considered as advertising when it has been requested by the school and is used under the supervision of teachers.

#### **IV. SPECIFIC TECHNIQUES**

**1. Direct Sales**

See rules on teleshopping in section II point 1 letter b).

**2. Sales promotion**

See rules on television sponsorship in section II point 1 letter b).



## V. HANDLING OF COMPLAINTS

In addition to the civil, criminal and administrative proceedings, respectively regulated in the Code of Civil Procedure, in the Code of Criminal Procedure and in the Law 24 November 1981 no. 689, the following procedures may be started.

### 1. SELF-REGULATION

The procedure of self-regulation are of two types: ordinary – in front of the *Giuri* and summary in front of the *Comitato di Controllo*.

The ordinary procedure in front of the *Giuri* (art. 36-38 of the Advertising Self-Regulation Code) begins with the presentation of an instance by the claimant to the President of the *Giuri*. This latter serves the petition to the interested party, to whom it assigns a term, between 8 and 12 days, for depositing defence memorandums and documents, and schedule the date of the hearing (generally short term).

At the hearing, discussion of the dispute proceeds and at the finish the *Giuri* meets in its chambers to confer. Immediately after making a decision on the case, the President of the *Giuri* announces the sentence to the parties.

The justification of the decision is then deposited, but the sentence goes into immediate effect from the moment it is given and the parties are obligated to carry it out.

The measures which the *Giuri* can carry out if it is established that the charged advertisement is in violation of the Advertising Self-Regulation Code are two: an order of discontinuing the advertisement, and eventually an order of publishing an excerpt of the sentence in one or more media. The second measure is usually only taken in severe cases.

In case of breach of the measure adopted by the *Giuri*, this latter orders the disclosure to the public of the violation. The *Giuri* cannot condemn to the compensation for damages. *Giuri*'s decisions are irrevocable.

In the proceedings before the *Comitato di controllo* (art. 39 of the Advertising Self-Regulation Code) , this latter, ascertaining that the advertising is evidently

in violation of a provision of the Self-Regulation Code, may order to discontinue the advertisement.

The party may oppose within the term of ten days. If the Chairman of the *Comitato di Controllo* considers founded the opposition, the order is revoked; otherwise, the case is deferred to the Chairman of the *Giurì*. If this latter confirms the decision of the *Comitato di Controllo*, the order become definitive; otherwise, the case will be subject to the ordinary proceedings. In such case, the order is revoked.

Decisions ascertaining infringing of advertising rules:

### YEAR 2000

Giurì		Comitato di Controllo	
n.	Defendant	n.	defendant
366	San Carlo Gruppo Alimentare	369	Stream, Rai, Publitalia
313	Benetton Group; Energy Project Group; La Repubblica; A. Manzoni & C.	339	Warner Home Video, RCS Periodici, Cairo Pubblicità
296	Francesco Biasia; D'Adda Lorenzi Vigorelli BBDO; Mondadori	322	Edizioni Star Comics
271	Fater; Publitalia; RAI	321	Swish Jeans; Il Messaggero; Piemn RCS Editori; A & P; ALESSI; Publiflor
98	Excite Italia; Gruner und Jahr Mondadori Editore; RCS Periodici		
95	Belgarda; La Repubblica; A Manzoni C.		
TOT		<b>6</b>	TOT <b>4</b>

### YEAR 1999

Giurì		Comitato di Controllo	
n.	Defendant	n.	defendant
401	PGH Piero Guidi, Mondadori	381	3D PLANET; Il Mio Castello
377	Benetton Group; Agenzia Energy Project; Mondadori		
242	Piaggio Italia; Agenzia BGS DMB & Gruner und Jahr/Mondadori; Publitalia '80; ELEMEDIA; A. Manzoni & C.		
165	D.D. RCS PERIODICI; CAIR PUBBLICITA'; RCS Quotidiani; RC Pubblicità		

TOT	4	TOT	1
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### YEAR 1998

Giuri		Comitato di Controllo	
n.	defendant	n.	defendant
372	Perfetti; Publitalia '80; RAI		
349	Diesel; A&P; Avenir Italia; Jol Pubblicità; Publiflor		
238	Piaggio Italia; Agenzia BGS DMB & Gruner und Jahr/Mondadori; Con Editore; Multimedia Pubblicità		
205	HONDA ITALIA; Conti Editore; Mul Media Pubblicità		
192	Novartis Consumer Health		
172	BENELLI; La Repubblica; A. Manzoni C.; RCS Editori; Opus Proclama		
170	SIXTY		
165	DIESEL; sep; Area Nord; Gruner un Jahr/Mondadori; Mondadori Pubblicit E&P; Avenir Italia		
164	IMETEC; PUBLITALIA		
157	EMI MUSIC ITALY; T INTERNAZIONALE; Cecchi Go Advertising		
TOT	10	TOT	0

### YEAR 1997

Giuri		Comitato di Controllo	
n.	defendant	n.	defendant
340	F.A.I.D.; AG. ARMANDO TESTA; L STAMPA; IL SOLE 24 ORE;	352	EDITORIALE SORIT; PAGINE ITALIA
182	APRILIA; AGENZIA BDD; PUBLITALIA 80'; MEDIASET; RAI	345	INTERACTIVE; RCS EDITOR MONDADORI INFORMATICA;
165	SOFFAS	241	RCS EDITORI; SETTORE PUBBLICITA
130	QUARTO POTERE; PUBLITALIA 80 AFFITALIA	194	RCS PERIODICI; CAIRO PUBBLICITA CASA EDITRICE UNIVERSO UNIVERSO PUBBLICITA'

110	PIAGGIO ITALIA; AGENZIA BGS DM & B; PUBLITALIA 80'	166	BELGARDA; AG B&B PROMOTION ED DIAMANTE SOC COO GIORNALISTICA
99	SUPERGA; AGENZIA PIRELL GOTTSCHE LOWE; PUBLITALIA 80'	124	EUROPA MARKET; RCS PERIODIC PRS
6	Linea GIG; PUBLIKIDS; PUBLITALI 80'	12	WORLD SERVIZI EDITORIALI; CAS EDITRICE UNIVERSO, UNIVERS PUBBLICITA'
5	GIOCHI PREZIOSI; PUBLITALIA 80'		
3	GIOCHI PREZIOSI; PUBLITALIA 80'		
TOT	<b>9</b>	TOT	<b>7</b>

## **2. ADMINISTRATIVE PROCEDURE**

The administrative procedure before the *Autorità Garante della Concorrenza e del Mercato* (hereinafter the “Authority”) is set forth in article 7 of the Legislative Decree 25 January 1992 no. 74.

Competitors, consumers, their organizations and associations, the Minister of Trade and Industry, and any other government department or agency which is an interested party by virtue of their institutional duties, may, also acting on a complaint from the public, request the Authority to prohibit any misleading advertising or comparative advertising deemed to be unlawful, and order its suspension and the removal of its effects.

The Authority may issue a reasoned order provisionally suspending the misleading or comparative advertising deemed to be unlawful, in cases of particular urgency. In every instance it shall notify the advertiser that an investigation has commenced and if the principal commissioning the advertisement is unknown, it may request the owner of the medium through which the advertisement is disseminated to supply all the information needed to identify the principal.

The Authority may require the advertiser to furnish evidence as to the accuracy of factual claims in an advertisement if, taking into account the legitimate interest of the advertiser and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case. If this evidence is not given or is deemed inadequate, the factual data shall be considered false.

When an advertisement has been or is to be disseminated through periodicals or daily newspapers, or by radio or television or by any telecommunications medium, before issuing any measure, the Competition Authority shall seek the opinion of the *Garante per la radiodiffusione e l'editoria*.

In its rulings the Authority must give full reasons, and its decision is final. If it rules that an advertisement is misleading or that the comparative advertisement is unlawful, it shall rule in favour of the complainant and prohibit any advertising that has not yet been made public or shall order any advertising that has already begun to be suspended. When the Authority upholds a complaint, it may order its ruling to be published, wholly or in part, as well as a public notice correcting the misleading information so that the misleading advertising or the unlawful comparative advertisement will not continue to produce any effects.

The procedure for investigation is set forth in Presidential Decree 10 October 1996 no. 627 and it is regulated in order to guarantee both parties a fair hearing and full access to the case papers and for transcript to be made of the hearings.

The procedure before the Authority ends with the issue of a motivated decision having administrative nature. If the petition is accepted, the *Autorità* orders to discontinue the advertisement. Its decision is definitive and immediate. The *Autorità* may order the publishing of its decision; it may not condemn the compensation for damages.

Any advertiser who fails to comply with the emergency measures or with the order to refrain from advertising or to remove the effects of unlawful advertising is liable to imprisonment of up to three months and a fine of up to five million lire.

Failure by the owner of the medium used to disseminate the advertisement to provide the information requested by the Authority in order to identify the principal shall render him liable to an administrative fine imposed by the Authority between two and five million lire.

Appeals against the final decisions adopted by the Authority shall be filed exclusively before the administrative courts.

Decisions of the Authority:

**YEAR 2000**

**Misleading**

PI2701 – ROLLERBLADE	24/02/00
PI 2693 – MATTEL BARBIE E KRISSEY	

**YEAR 1999**

**Not Misleading**

PI 2265 – KINDER COLAZIONE PIU'	11/03/99
PI 2347 – TELEPROMOZIONE LEGO	26/05/99
PI 2353 – ASSOCIAZIONE CULTURALE CHARLOT	09/06/99
PI 2369A – TELEPROMOZIONI HASBRO	01/07/99
PI 2369B – TELEPROMOZIONI DIDO'	01/07/99

**Misleading**

PI 2033B – CORRETTORE KANCELLA JUNIOR	15/04/99
PI 2261 – DIESEL-DENIM DIVISION	25/02/99
PI 2320 – MIRELLA-TOPOLINO	06/05/99
PI 2645 – OMNITEL SUMMER CARD	02/12/99

**YEAR 1998**

**Not misleading**

PI 1674 – PRODOTTI PER L'INFANZIA PROCTER AND GAMBLE	
26/02/98	
PI 1693 - COOP- SCUOLA G. PASCOLI	30/04/98
PI 1788 – QUADERNI CARTIERA PIGNA	05/02/98
PI 1993 – SPOT STRAPENNE	10/07/98
PI 2033A – MCAIDE	
26/11/98	
PI 2033C – BIANCO PELIKAN CORRECTION BIG PEN	26/11/98
PI 2054 – SPOT IMETEC	12/11/98
PI 2067 – CORRETTORE LIQUID PAPER	19/11/98





## **Misleading**

PI 1572 – NORAD	05/03/98
PI 1845- SUPER-BIKE ACTION MAN	11/06/98
PI 1950 – GIG LIBRO DEI GIOCATTOLE 08/10/98	
PI 2025 – CATALOGO ENERGIE	25/06/98
PI 2065 – CICLOMOTORI BENELLI	19/11/98

## **YEAR 1997**

### **Not misleading**

PI 1135 – BARBIE	10/04/97
PI 1225 – DOTT. HORRIBILIUS	12/06/97
PI 1264 – BIG BABOL	24/04/97
PI 1339 – BEVANDE ALCOLICHE BRANCA	26/06/97
PI 1339A – BEVANDE ALCOLICHE MARTINI	26/06/97
PI 1339B – BEVANDE ALCOLICHE PORETTI	26/06/97
PI 1339C – BEVANDE ALCOLICHE HEINEKEN	26/06/97
PI 1339D – BEVANDE ALCOLICHE PERONI	26/06/97
PI 1339E – BEVANDE ALCOLICHE MOLINARI	18/06/97
PI 1339F – BEVANDE ALCOLICHE FRIULVINI	26/06/97
PI 1339G – BEVANDE ALCOLICHE GRAND MARNIER	26/06/97
PI 1339H – BEVANDE ALCOLICHE SEAGRAM	18/06/97
PI 1339I – BEVANDE ALCOLICHE CASTELLINO	26/06/97
PI 1339L – BEVANDE ALCOLICHE BARBERO 1891	26/06/97

### **Misleading**

PI 1078 – OK CLUB-SERVIZIO TELEFONICO	13/03/97
PI 1098 – SAN CARLO JUNIOR	7/02/97
PI 1263 – TEGOLINI MULINO BIANCO	30/07/97
PI 1325 – PROF. HORRIBILIUS II	03/10/97
PI 1420 – GILERA RUNNER	05/08/97
PI 1533 – SPOT BENELLI 491	04/12/97

### **3. JUDICIAL PROCEDURE**

The ordinary courts of law shall at all times retain jurisdiction over matters of unfair competition pursuant to article 2598 of the civil code and, as far as comparative advertising is concerned, in relation to acts performed in violation of copyright protected by law no. 633 of 22 April 1941 as subsequently amended, and violations of company names protected by royal decree no. 929 of 21 June 1942, as subsequently amended, and violations of designations of origin which are recognized and protected in Italy and of any other distinctive trademarks, or marks of goods and services belonging to the competitors.

#### **3.1. Ordinary procedure**

##### **3.1.1. The preliminary phase**

The ordinary proceeding is instituted by way of a legal demand, that is proposed with a summons served by an officer of justice.

The summons must contain the following elements (the summons is void if any of them are omitted or uncertain):

- 1) the name of the judicial body before which the claim is proposed (either the *Tribunale* or the *Giudice di Pace*, depending on the value; if it is impossible to determine the value the Tribunale is always the competent court) and on the subject matter of the claim);
- 2) the names of the plaintiff and the defendant;
- 3) the subject matter of the claim;
- 4) the full disclosure of the facts and of the elements of right on which the claim is based and the relative conclusions;
- 5) specific mention of the instruments of evidence that the plaintiff wants to present, and in particular of the documents;
- 6) the name of the counsel and a reference to the power of attorney;
- 7) the date chosen by the plaintiff for the first hearing of the trial.

The defendant may propose counter-claims or call third parties in the trial by way of lodging a statement of defence (which is his formal appearance) with the court's clerk 20 days prior to the date of the first hearing indicated in the summons (or to the later date definitively fixed on the trial list). These rights will be lost as a result of non-appearance within the term of 20 days prior to the date of the first hearing.

However, as happens in most cases, the defendant can choose to delay his appearance until the date of the first hearing if he has no interest in making counter-claims or calling third parties in the trial.

Before the commencement of proceeding, the plaintiff will have to confer his counsel a power of attorney, either through a notarial deed that can grant a general or specific power of attorney, or with a proxy countersigned by the counsel which is usually printed in the margin or at the bottom of the summons. The defendant will have to grant the power of attorney to his counsel prior to his first act of appearance.

### **3.1.2. The first hearing**

At the first hearing (article 180 of the Italian civil procedure code, hereinafter “*c.p.c.*”) the judge checks the formal regularity of the summons and of the statement lodged by the defendant before the counsels of the parties and, if necessary, gives the relevant orders to eliminate the vices which make the appearance of the parties irregular.

At the same hearing the judge may directly, or on the basis of objections made by the parties, point out “his own” lack of jurisdiction (each court’s jurisdiction is in fact limited locally and as to the questions to be determined, the jurisdiction of the Giudice di Pace is also limited in most cases as to an amount of 5 million lire), or the lack of jurisdiction of the Italian judge towards a foreign one.

At the following hearing, pursuant article 183 *c.p.c.*, a full discussion of the case takes place: the parties shall have necessarily to attend in person or by proxy. The judge may in fact ask the parties explanations on the facts of the case and has to make an attempt to settle the case.

### **3.1.3. The evidence**

If this attempt does not succeed, the judge, pursuant to article 184 *c.p.c.*, may allow the parties to deposit deeds with the indication the evidences, production of documents or other means of evidence, postponing the proceedings to the hearing for the admission of all the evidences required by the parties. Alternatively, the judge can rely on the exhibits secured and presented by the parties.

The instruments of evidence constitute a *numerus clausus* and are: expert witnesses, presentation and examination of the accounts of the companies, a request for information made to the local government, documented evidence, public records and private documents, verification, action for fraud, formal interrogation, decisory, supplementary and evaluatory oaths, examination and testimonial evidence.

The phase of instruction is made up of four main events: the presentation of the evidence, the admission of the evidence, the taking of the evidence and the evaluation of the evidence by the judge.

Generally, the evidence used most frequently is testimonial evidence.

Since the duration of a proceeding of first instance mostly depends on the evidence which has to be taken, the number of witnesses to be heard, and, therefore, the number of hearings necessary for such formalities, it is impossible to predict accurately its duration- it can vary from one to almost four years. The same factors must be taken into account when trying to predict the cost of a legal action.

#### **3.1.4. The orders of payment during the lawsuit**

Moreover, according to article 186-*bis* c.p.c., at the request of one of the parties, the judge may order the payment of the undisputed sums. This order is an executive title and maintains its validity even if the lawsuit fails.

According to article 186-*ter* c.p.c., the judge, in the presence of the requirements requested for the injunction order, in every phase and grade of the judgement, can order the payment of the sums that appear due.

Finally, on the basis of article 186-*quater* c.p.c., it is possible for the judge to grant an order up to the limit for which he considers that the evidence has been reached. This order is also an executive title. If the debtor declares to agree with the order, it will become definitive and the creditor, if he is dissatisfied, can propose an appeal. On the other hand, if the debtor disagrees, the definitive judgement must be filed, confirming, modifying or revoking the previous order.

#### **3.1.5. The adjudicatory phase**

If there is no need for an instruction of the case, or if this option has already been exhausted, the parties explain their pleadings before the judge, who makes

the ruling himself (this was one of the major innovations brought in by the 1990 reform - before this cases were decided by a panel of three judges).

The parties must make sure that they submit the so-called *comparsa conclusionali* (concluding documents) not more than sixty days after the hearing in which the conclusions were reached.

The parties are also allowed, within twenty from the end of the period above, to submit another document called *memoria di replica* in reply to the *comparsa conclusionale*.

The court's decision must be filed with the court's clerk within sixty days - non peremptory term - of the submission of the *memorie di replica*.

### **3.1.6. Definitive judgement**

The first grade judgement is provisionally executive (article 282 c.p.c.); therefore, no other proceeding is necessary - except for the payment of the taxation for the registration of the statement - for the affixing of the executive formula.

Against the first grade judgement, again through a summons, it is possible to propose appeal within mandatory terms of:

30 days from the date a certified copy of the judgement has been served by one party to the other through an officer of justice; or,  
1 year from the date the judge has filed the judgement with the court's clerk, even if the judgement has not been served by one party to the other; 45 days must be added to this second term in order to make up for the interruption of the terms which occurs every year from July 31 to September 15.

On the basis of article 283 c.p.c., the judge of the appeal, when there are grounded reasons, can suspend the executive validity or the execution of the judgement for the whole or for a part.

In our civil judicial system there are two levels of judgement. There is also the possibility of proposing a petition against the second grade judgement at the Supreme Court of Cassation for reasons concerning legality only, such as jurisdiction of the Italian courts, violation of the rules about each court's jurisdiction, violation or for false application of the law, invalidity of the judgement.

## **3.2. Injunction procedure**

### **3.2.1. Solicitation of payment**

The payment of the amounts due can be demanded from the debtor through a registered letter, drawn up by the creditor himself or by a lawyer, in which it is specified that if the amount due is not paid, generally within 7/10 days, the creditor will take legal proceedings to recover his credit.

### **3.2.2. The procedure**

Instead of proceeding with an ordinary lawsuit, if the debtor does not pay the sums due, the creditor can request the Court to grant an order of payment through a petition of injunction.

The Court, having examined the petition and the exhibits, if he considers the demand well-grounded, will order an injunction of payment against the debtor; the injunction orders the execution of the payment within 40 days from the serving of a certified copy of the petition and of the order of the judge.

Within the same 40 days term, the debtor is allowed to make opposition before the court that has granted the injunction, by way of commencing ordinary proceeding, whose structure is that above described.

However, if the opposition is not grounded on written evidence, the creditor can request the judge to grant temporary execution of the injunction order.

If the debtor does not propose the opposition within the time given, the injunction will become definitive and, through the apposition of the executive formula, it will gain the validity of an executive title.

As well as this, on the basis of article 642 c.p.c., the injunction order can be immediately granted in executive form if the credit is based on:

- bill of exchange;
- cheque;
- bank draft;
- liquidation certificate of exchange;
- act received by a public notary or by another authorised public officer.

In these cases, the judge orders the debtor to execute the payment immediately, authorising the execution of the injunction if the payment is not made and fixing the 40 days term only for the opposition.

The temporary execution can also be granted if the claimant fears that he may be in danger of suffering a damage if the payment is delayed. In this case the judge may order the claimant to provide a suitable security.

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