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**Legislative Decree no. 145 of 2 August 2007 (Official Gazette, 6 September, no. 207) –
Transposition of article 14 of Directive 2005/29/EC amending Directive
84/450/EEC concerning misleading advertising**

THE PRESIDENT OF THE REPUBLIC

Having regard to sections 76 and 87 of the Constitution;

Having regard to section 14, subsection 1 of Law no. 400 of 23 August 1988;

Having regard to Law no. 29 of 25 January 2006, containing “Provisions for the fulfilment of obligations deriving from Italy’s membership in the European Community – Community Law 2005”, and in particular section 1 and Annex A;

Having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005, concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC and Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council, as well as Regulation (EC) no. 2006/2004 of the European Parliament and of the Council (“Unfair Commercial Practices Directive”), in particular article 14;

Having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006, concerning misleading and comparative advertising (codified version);

Having regard to Legislative Decree no. 206 of 6 September 2005, containing the Consumer Code;

Having regard to the resolution of the Council of Ministries, adopted in its meeting of 27 July 2007;

Following a proposal by the Minister for European Policies and the Minister for Economic Development, in agreement with the Ministers of Foreign Affairs, Justice and Economy and Finance;

HEREBY ISSUES

The following legislative decree:

Section 1

Purpose

1. The provisions of this legislative decree aim to protect traders against misleading advertising and the unfair consequences thereof and to lay down the conditions under which comparative advertising is permitted.
2. Advertising must be openly recognisable as such, truthful and fair.

Section 2

Definitions

1. For the purposes of this legislative decree:
 - a) ‘advertising’ means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the transfer of movable or immovable goods, the provision of works or services, or the establishment or transfer of related rights and obligations;
 - b) ‘misleading advertising’ means any advertising which in any way, including its presentation, is likely to deceive the natural or legal persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, is likely to injure a competitor;
 - c) ‘trader’ means any natural or legal person who is acting for purposes relating to their trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;
 - d) ‘comparative advertising’ means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor;

e) ‘advertiser’ means the person or entity commissioning the advertising message and its author. If these parties cannot be identified, the term also refers to the owner of the medium used to disseminate the advertising message, or the person responsible for radio or television programming.

Section 3

Assessment criteria

1. In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning:

a) the characteristics of goods or services, such as 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 category, attributes and rights of advertisers, such as their identity and assets, their qualifications and ownership of intellectual or industrial property rights, any other rights over intangible assets relating to the business, and their awards or distinctions.

Section 4

Conditions for lawful comparative advertising

1. Comparative advertising shall, as far as the comparison is concerned, be deemed lawful when the following conditions are met:

a) it is not misleading within the meaning of this legislative decree or sections 21, 22 and 23 of Legislative Decree no. 206 of 6 September 2005, containing the “Consumer Code”;

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 may include price;

d) it does not create confusion on the market among traders, between the advertiser and a competitor or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor;

e) it does not discredit or denigrate the trademarks, trade names, other distinguishing marks, goods, services, activities or position 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 trademark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;

h) it does not present goods or services as imitations or replicas of goods or services bearing a protected trademark or trade name.

2. The verifiability requirement under subsection 1, letter c) is deemed to be met when the data used to present the characteristics of the advertised good or service can be substantiated.

3. Any comparison referring to a special offer must clearly and unambiguously indicate the end date of the offer or, if the special offer has not yet started, the start date of the period during which the special price or other particular conditions apply, or, where applicable, that the special offer is subject to the availability of the goods or services.

Section 5

Transparency of advertising

1. Advertising must be readily recognisable as such. In print media, it must be clearly distinguishable from other forms of communication to the public through visible graphic means.

2. The terms "guarantee", "guaranteed" and similar expressions may be used only if accompanied by a specification of the guarantee's content and conditions. If the advertising message is too short to include all details, it must contain a brief reference to the guarantee's content and conditions, along with a clear indication of where consumers can readily access the full terms.

3. All forms of subliminal advertising are prohibited.

Section 6
Advertising of products dangerous to health and safety

1. Advertising shall be deemed misleading when, in relation to products that may pose a danger to the health and safety of the individuals it reaches, it fails to disclose such risks, thereby causing said individuals to disregard normal rules of caution and vigilance.

Section 7
Children and adolescents

1. Advertising shall be deemed misleading when, being likely to reach children and adolescents, it takes unfair advantage of their natural credulity or lack of experience, or when, by featuring children or adolescents in advertising messages – without prejudice to the provisions of section 10 of Law no. 112 of 3 May 2004 – it exploits the natural emotional response of adults towards the young.

2. Advertising shall be deemed misleading where, being likely to reach children and adolescents, it may – even indirectly – pose a threat to their safety.

Section 8
Administrative and judicial remedies

1. The Italian Competition Authority, hereinafter referred to as the Authority, shall perform the tasks set out hereinafter.

2. The Authority, either on its own initiative or upon request by any party or organisation with a vested interest, shall prohibit the continuation and remove the effects of misleading and unlawful comparative advertising. For the performance of the tasks referred to in subsection 1, the Authority may resort to the *Guardia di Finanza* (the Italian Financial Police), which shall act with the powers conferred upon it for the purpose of checking value added tax and income tax.

3. The Authority may, by reasoned decision, order the temporary suspension of misleading and unlawful comparative advertising in cases of particular urgency. In any event, the Authority shall inform the trader of the opening of proceedings and, if the advertiser is unknown, it may request the owner of the medium used to disseminate the advertising message for any information that may help identify the advertiser. The Authority may also request from any party information and documents relevant for the purpose of establishing the infringement. The

provisions laid down in section 14, subsections 2, 3 and 4 of Law no. 287 of 10 October 1990 shall apply.

4. In the event of unjustified failure to comply with the measures ordered by the Authority pursuant to section 14, subsection 2 of Law no. 287 of 10 October 1990, the Authority shall impose an administrative monetary sanction ranging from 2,000 euro to 20,000 euro. If the information or documentation provided is found to be false, the Authority shall impose an administrative monetary sanction ranging from €4,000 euro to €40,000 euro.

5. The Authority may order the trader to provide proof of the factual accuracy of the information in the advertisement if, having regard to the rights or legitimate interests of the trader and any other party to the proceedings, such a requirement is justified by the circumstances of the case. If such proof is not provided or is deemed insufficient, the information shall be regarded as inaccurate.

6. When the advertisement has been or is to be disseminated through periodicals, daily newspapers, radio, television or other telecommunications media, the Authority shall seek the opinion of the Italian Communications Authority (AGCOM) before taking action.

7. Except in cases of manifest unfairness or seriousness, the Authority may allow the trader responsible for the misleading and unlawful comparative advertising to offer a commitment to cease the infringement, either by withdrawing the advertisement or by modifying it to remove the unlawful aspects. The Authority may order that the statement of commitments be published at the trader's expense. In such cases, having assessed the adequacy of the commitments, the Authority may make the commitments binding on the trader and close the proceedings without establishing an infringement.

8. If the Authority finds an advertisement to be misleading or a comparative advertising message to be unlawful, it shall prohibit its dissemination if it has not yet reached the public, or its continuation if it has already been circulated. The Authority may also order, at the trader's expense, the publication of its decision – or an excerpt thereof – along with a corrective statement where appropriate, in order to prevent the misleading or unlawful comparative advertising message from having any further impact.

9. In its decision prohibiting the dissemination of the advertisement, the Authority shall also impose an administrative monetary sanction ranging from 5,000 euro to 500,000 euro, depending on the seriousness and duration of the infringement. For advertising that may pose a

risk to health or safety, or are likely to reach minors or adolescents – directly or indirectly – the sanction shall be no less than 50,000 euro.

10. In cases where advertising appears on product packaging, the Authority will set a deadline for implementing the measures mentioned in subsections 3 and 8, allowing sufficient time for the technical adjustments needed to comply.

11. By means of its own regulation, to be adopted within ninety days from the date of publication of this legislative decree, the Italian Competition Authority shall lay down rules governing the investigation procedure, in such a way as to ensure the right to be heard, full access to the investigation documents and the recording of minutes.

12. In case of failure to comply with the *interim* measures, cease and desist orders or remedial actions laid down in subsections 3, 8 and 10, or with the commitments made pursuant to subsection 7, the Authority shall impose an administrative monetary sanction ranging from 10,000 euro to 150,000 euro. In cases of repeated non-compliance, the Authority may order the suspension of the undertaking's business activities for up to thirty days.

13. The provisions laid down in Chapter I, part I, and in sections 26, 27, 28 and 29 of Law no. 689 of 24 November 1981, as subsequently amended, shall apply to the administrative monetary sanctions resulting from violations of this decree, where applicable. Administrative monetary sanctions hereunder must be paid within thirty days of notification of the Authority's decision.

14. Where advertising has been authorised by an administrative decision – also aimed at verifying that it is not misleading or that a comparative advertising message is lawful – individuals or organisations with a vested interest may seek protection through judicial proceedings by appealing said decision before the administrative court.

15. This is without prejudice to the jurisdiction of the ordinary courts over matters of unfair competition as set out in section 2598 of the Civil Code and, with regard to comparative advertising, over matters concerning infringements of legislation on copyright (Law no. 633 of 22 April 1941, as amended), trademarks (Legislative Decree no. 30 of 10 February 2005, as amended), as well as designations of origin recognised and protected in Italy, and other distinctive signs associated with competing undertakings, products and services.

16. To ensure the performance of the tasks hereunder, the number of positions envisaged in the organisational chart of the Italian Competition Authority under section 11, subsection 1 of Law no. 287 of 10 October 1990 shall be increased by twenty, two of which at managerial level. For

the same purpose, the number of fixed-term contracts under section 11, subsection 4 of Law no. 287 of 10 October 1990 shall be increased by ten. The Authority may also rely on the secondment of up to ten additional staff members. The financial burden resulting from this provision shall be covered using the resources collected pursuant to section 10, subsection 7-*bis* of Law no. 287 of 10 October 1990.

Section 9

Self-regulation

1. Interested parties may request that the continuation of misleading and comparative advertising deemed unlawful be prohibited by referring the matter to voluntary and independent self-regulatory bodies.

2. Once a procedure has been initiated before a self-regulatory body, the parties may agree not to bring the matter before the Authority until a final decision has been issued, or they may request the suspension of proceedings already pending before the Authority – whether initiated by them or by another entitled party – pending the outcome of the self-regulatory process. Having assessed all relevant circumstances, the Authority may order the suspension of its proceedings for a period not exceeding thirty days.

Section 10

Financial neutrality

1. The implementation of this decree shall not give rise to any new or increased burdens on public finances.

This decree, bearing the seal of the State, will be added to the Official Compendium of Legislative Acts of the Italian Republic. All those to whom it applies shall observe and enforce it, as the case may be.