

THE IMPACT OF THE EUROPEAN LEGISLATION ON ADVERTISING STRATEGIES IN THE FIELD OF FOOD PRODUCTS

MANEA Laura¹

Transilvania University, Brasov, Romania

Abstract

Within the European Union (EU), in order to allow the European consumers to make informed choices and to remove the obstacles that may impede the free movement of food products and the conditions for unequal competition, rules on labelling, presentation and advertising made regarding prepacked foods are currently harmonized with the entry into force in December 2014 of the EU Regulation no.1169 / 2011 concerning informing the consumers about the food products. Regarding the advertising of products, the Community legislation is imperative on the misleading and comparative advertising (EC Directive 2006/114 into force in December 2007), for each individual country to apply its own rules on advertising. This article is an analysis of the regulatory framework, at the same time identifying the impact of the legal norms on the policies of promoting through advertising the food products.

Key words: *comparative advertising, message, misleading advertisement, food products, information*

1. Introduction

In today's society we can not imagine a product without packaging and label for almost all food products reach the consumer packaged, except from the unprocessed agricultural products, marketed for consumption, although, in the main, they must be packaged in order to be protected. Packaging protects products, ensures easier handling of the product, provides important information (nutritional, the origin, the ingredients or manufacturing conditions, the manufacturer and its certification) about the product through

¹ *Ph.D. student, Faculty of Economic Sciences and Business Administration /Department of Marketing, Tourism and International Relations, manea@unitbv.ro*

the label, and not least promote the product, by presenting it in a most attractive form or through individual graphic elements. Thus, complying with the function of informing the consumer on the characteristics of a product by the way of identifying the products, the information on storage, preparation and use, manner of opening the packaging and product safety warnings (shelf life and storage conditions after opening the package), the package provides the primary support for the information that must reach the consumer, information to be presented and perceived by consumers as a product recommendation.

The promotion is the main instrument of a profitable marketing, being the fourth element of the marketing mix or the fourth P in the typology of E.McCarthy [1] and Philip Kotler's vision (Product - Price - Promotion - Placement). However, promotion is considered to be the most expensive component of the marketing strategy in terms of time required and allocated budget. The promotion aims to increase the consumer's interest in the product, and the main paths are providing information about the characteristics of the product. The promotion activity aims at persuading the customer to purchase the product, and among the promotion activities we mention direct marketing, public relations and advertising.

From the psychological point of view, although advertising is perceived as especially oriented towards selling the product, in fact it aims at creating an image associated with the product in the mind of the consumer/customer, for which the advertisement is customized to the product. Thus, in the early twentieth century, the sociologist Emily Fogg Meade [2] placing advertising in the modern economy believed that advertising is *a way of educating by knowing the expanding consumer goods, the educational function of advertising subordinating the marketing sales function.*

Identifying the functions of advertising, we must point at the interdependence of the three functions : commercial, artistic and educational, as through advertising, the sponsor/proprietor of the product/service promoted in this way tries to sell products/services through the creation of social values, norms of behaviour and attitudes as these values are reflected in the advertised product with artistic value in terms of the ambient and the aesthetic contextual advertising in which the product is presented.

2. Techniques of promotion and the advertising messages

In addressing the opportunity of the promotion techniques, the marketers [3], [4] show the difference and also the link between the communications and promotion, as communication is the main method of promotion, the message circulating from the producer to the consumer, and the feed-back, including under the form of message being sent by the consumer to the manufacturer. Thus, if the promotion is done through communication, the communication as a social activity exists independent from the promotion.

The communication between people means sharing ideas, feelings, emotions, facts, opinions [3]; the human communication is therefore a communication of signals, meanings and significances, so that in communication, several things matter, from the language, the approach, the symbols used in the subliminal messages transmitted, the idea conveyed to the mass opinion created, to the transmitter's feelings and the receiver's reaction.

The communication from the marketing perspective means everything the company transmits, willingly or not, contextually or in an isolated way, by what it owns, by what it produces and how it produces, in the acts it performs [4]. Promoting is the part of communication which seeks to define the product in the customers' mind and stimulate the demand for the respective product, which implies a continuous activity of promotion by repeating the message, respectively changing the message if the feed-back from the consumer is unfavorable.

Based on direct or indirect communication, the promotion includes advertising activities through the media (TV commercials or radio, newspaper advertisements), direct advertising (using the telephone, e-mail or postal services in order to communicate the commercial messages to the pre-selected clients), sales promotion (the customer receives together with a product purchased the message related to the possibility of winning more in the form of lottery tickets, raffle and various gifts), personal selling and public relations, or the art of being successful to the public (different programs meant to promote or protect the image of the product / marketing firm). These promotion techniques make up what the reference books [4] call the promotional mix. The promotional mix is part of the promotional strategy which a company chooses according to the communication goals set, the specific budget for promotion, the messages chosen and the distribution channels, so as each promotional strategy is individualized from one product

to another, from one company to another. In order to illustrate these differences, we mention that in the Romanian ads to yogurt, the message is that the consumption of this product brings benefits for the health and wellbeing of the body, or the emphasis is on the taste induced, while the ads to cold meats induce the idea that they are consumed in the family, meaning that regardless of age, or that they are necessary for the growth of children, and regarding the budget allocated, it should be noted that some companies choose in order to promote a product the image of a personality associated to the product image (eg. actress Stela Popescu, Mihaela Radulescu or the sportswoman Nadia Comaneci) .

In the promotional activity, we see the development of promotional communication from the one-way communication, from the company to the passive consumer (typology identified in the years 40-50 by the type of message and promotion (typology established by Wilbur Schramm from 1971 onwards).

The option for a particular promotional mix is made based on the type of product thus promoted and the product retail market (for instance, in case of industrial goods in general, personal selling is opted for, the sales promotion and advertising come only the third, while consumer goods, including food goods are promoted primarily through advertising, sales promotion and third place, direct selling – Figure 1)

Figure 1: Promotional techniques depending on the type of products



Given the leading position held by advertising as a technique to promote food products, we must point out that a successful advertisement should combine the textual message with the iconic message, create a matching celebrity-brand by associating the image of a famous person for the target-audience, but also to combine humour with the emotions transmitted. The textual message, verbal in advertising has the role to attract the consumer

and it has evolved from a complex message, in which much information was offered, to a short, credible, current message, expressed in simple words but which capture the essence, which today is identified as being the advertising slogan. For example, in case of advertising food products, we mention in case of the dairy products use of slogans like *Your daily health portion!* or *Active inside and you feel good!* (Danone) or *Health taken from milk!* (Dorna) and the slogan *The tastiest when it comes to meat!* Used by a manufacturer of cold meats (Meda) or *More fruit! More energy!* (Prigat juice).

The message conveyed is intended to potentate a quality strongly associated to the product - the health conferred by the dairy products, consumed including by children, the peculiar taste of meat products, the quality of fruit and the energy given by the consumption of juice. The quality of the arguments represents a prerequisite for increasing in time the persuasive impact of the advertising message on the auditor consumer [5].

The advertisement offers the consumer new information on the product, information which, however, is grafted onto the previously knowledge stored in the consumer's memory about the product, thereby creating a link between the stimuli located and excited by the advertisement and the knowledge already acquired by the consumer about the product.

3. Strategies for creating advertising messages adapted to agrifood products

Considered to be the nerve of the company's communication policy [6], advertising has become today the promotion technique most commonly used in all areas, developing even as a distinct economic sector - the advertising industry - which involves from marketing specialists to artists, production companies and suppliers of all kinds. Regardless of the definition, we remember the three main issues captured mainly in the specialized definitions for advertising: *communication* (advertising is a form of impersonal communication, having an identified or identifiable source) *the diffuse mass of receivers* (advertising is a mass communication, as it concerns a whole market, a diffuse mass of potential auditors) and *the socio-economic function* (advertising has an important socio-economic function, derived from the action and its long-term objectives) [3].

Instinctively, through advertising, the iconic message is communicated to the consumers accompanied by specific auditory stimuli, exploiting predominantly the visual and auditory senses, this combination

resulting in a manipulation of the olfactory, gustatory and tactile senses, as appropriate (eg. by waving an item of clothing associated to the image of strong smelling flower induces the public the idea of a strong olfactory stimulus associated to the flowers' scent, in the same way as the association of the image of the freshly washed skin with the image that of a piece of velvet induces the idea of a tactile stimulus associated to the idea of velvety, soft).

It was objected that advertising generates new necessities and certain addictions, manipulating through subliminal messages, that it is misleading and comparative, to the detriment of another similar product from another manufacturer. In a general analysis, we must admit that in the case of certain allegations, the arguments brought are confirmed, for which in order to reduce the negative impact of advertising, the intervention of society through certain instruments is necessary, such as for example a concrete standardized framework on advertising. But, at the same time, we also have to show the fact that some accusations do not confirm, involving myths launched with derogatory purposes.

The assertion generating certain primary necessities and / or social of the individual through social advertising is an unconfirmed myth, for the existence and manifestation of needs is related to the individual ego, for if the primary necessities (natural or physiological) are hereditary and instinctive in the human nature, the secondary or social necessities (necessities of belonging, esteem and cognitive necessities, as well as necessities of self-improvement and self-update) are due to external factors to the individual but intrinsic to his/her social nature such as education, family, religion, group of friends, team work, etc. Ion Dragan reaches the same conclusion as ours [7], for ads cannot create new needs, they cannot manufacture them, but starting from satisfying the physiological needs, advertising can revive, rediscover superior necessities and also offers new ways of meeting the basic of needs.

Referring to the partials of the research on the consumers' attitudes towards commercials, we can say that these results are still contradictory, distorted from one moment to another or from one category of consumers to another because of certain time-varying factors - the time of data collection, the type of research applied, the formulation of questions, understanding the questions and the ability to respond according to their own feelings and prejudices, the accuracy of processing the details and their own prejudices.

The same issue of sensitivity, of a different perception between individuals and the different degree of determination in adopting their own

decisions is the reason why we will not support the allegations of manipulation carried out by advertising by means of subliminal messages. Moreover, we believe that this myth of subliminal advertising is maintained by the very media, by the journalists who, trying to convince the audience of the veracity of the information gathered and presented, not infrequently, turn to remarks such as *Unbelievable but true!* or *See it but do not believe it!*

Defined by Law no.148 / 2000 on advertising [8] as any advertisement that uses stimuli too weak to be perceived consciously, but that may influence the economic behaviour of a person, the subliminal advertising is prohibited by law.

Starting from the very legal definition of subliminal advertising, along with Septimius Chlecea [5] we consider that there is no absolute threshold at which a stimulus is labelled as too weak, so that we can identify the subliminal advertisement punctually, this leading to the conclusion, supported by us, that in fact there is no subliminal advertising message. The perceptual thresholds vary in relation to various external or internal factors to the individual or the external context in which the audience is placed, because the perception of a particular message varies if the receiver is tired or rested, s/he is conscious or intoxicated, is hungry or full, as appropriate. It has been shown experimentally that the "threshold" for words that refer to foods is lower for a hungry person than for the same person after dining [5].

The fact that advertising can be misleading is supported by social psychology studies in recent years, for which the legislator intervened by prohibiting it at national level (article 4 of Law no.158 / 2008 concerning misleading and comparative advertising [9]) and at Community level (Article 2 letters b) and c) and article 5 of Directive 2006/114 / EC concerning the misleading and comparative advertising [10] and articles 5 and 6 of Directive 2005 / 29 / EC on unfair commercial practices [11]).

From the perspective of creative strategies concerning advertising messages, we believe that they are adaptable to food products (used especially in dairy products Napolact, Covalact, or Sergiana meat products), the tragic advertising strategy but also the practical advertising strategy.

The egocentric strategy is adopted for the products that are to be found on the market and from other companies, products which are generally common for the consumers, but the difference will be made considering the origin and tradition of the product and / or producer, points scored in the advertisement, by using social symbols. The risk of such a strategy is the

possibility that the images or symbols used to become cultural phenomena, with which the audience will get used to in time, so at some point, the consumer will get to ignore the product, whose advertising message falls into desuetude [12]. In this case, the advertisement is shown in terms of transmitter / manufacturer, which thus becomes the central figure, and reference to the product is made by highlighting the characteristics regarding the origin and the geographic area from where the product comes, the value added to the product being social., by using various symbols, historical images [12]. As an example, we have the advertising campaign for Covalact products with the slogan *Too good, too much like the countryside products!* where the geographical reference is generic to the rural area with its traditional values (using a specific outfit, the rural ambience or the specific activities of rural households), for the trademark to identify still by means of the geographical reference - country Covalact.

The promotional clips for meat products offered by the company Sergiana use as geographical reference the region of Transylvania, the slogan used being Goodies from Transylvania, and in the clips, two specific locations are mentioned where activities are conducted in order to obtain the finite goods: Șercaia (area recognized for its pig farms) and Poiana Marului.

And in presenting the dairy products Napolact, an egocentric strategy is used, with reference to the area of Transylvania - Transylvania taste as a message in the TV spot - because one of the slogans used to be *Out of the tastefulness of Transylvania!* Also, in other TV spots for the Napolact products - *Cheese as in the old days* - the images used refer to living in a rural family, traditional costumes of the region also being used.

The tragic advertising strategy involves the theatrical presentation of the message and product, the star product of the advertising message being the product, generally a common product - for example dairy products - but which is presented as a star, focusing on the distinct characteristics [12]. The product is presented through the brand image, being used in the cases where the brand (manufacturer) diversified his/her offer over time.

Unlike this, the advertising strategy used for the presentation of advertising of consumer goods and also adapted to the food products focuses on the receiver of the message, the consumer in our case, who is presented in the advertisement in the commonplace of his/her concerns (home, a family meal, together with friends, together with the children, etc.) the product is presented by reference to the concrete performances and practical usefulness,

even at an attractive price (in this case we mention the commercials to laundry detergents that some time ago also differed by the low price compared to the enhanced quality of the product).

4. The European legislation on advertising

The Community legal framework regarding advertising includes the Directive 2006/114 / EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising [10], the Directive regarding Unfair Commercial Practices [11], while the consumer's information by other means is currently regulated by Regulation (EU) no.1169 / 2011 of the European Parliament and of the Council of 25 October 2011 on informing consumers about foods [13] which amends and repeals the previous statutory provisions. Thus, it was necessary to establish a minimum Community regulatory framework, common to all EU Member States in view on the one hand to the movement of food products in the Community, as well as the transboundary nature of advertising, so that the advertising in a particular EU Member State can have direct influence on the functioning of the internal market.

In addition to the general legislative framework, each EU member state has its own internal regulations on advertising, but all normative acts focus on proving the claims made in advertisements by the manufacturer / issuer and aim at the introduction of general principles established by the Code of Practice issued by the International Chamber of Commerce in Paris [14] regarding the commercials. According to the Code of practice in advertising, the ads must be honest, truthful and decent, the use of comparative claims against similar products from other companies being made respecting certain respect limits and commercials for products such as tobacco, alcoholic beverages are absolutely forbidden, as well as using in the TV commercials elements that induce emotions of fear or aggression.

According to Directive 2006/114 / EC [10], the misleading advertising is prohibited because by its misleading character, it can affect the economic behaviour of the consumers and traders or can bring harm to a competitor, so that Member States are required to adopt appropriate means to combat the misleading advertising. The criteria established by the Directive (Article 2 and Article 3 b Directive 2006/114 / EC [10]) to identify the misleading character take into account: the characteristics of the goods and services (availability, composition or nature, the method of manufacture or of performance, the

origin etc.), the expected results in the wake of their use and the results of quality checks carried out; the price or the method of calculation thereof; the conditions under which goods are supplied or services are provided; the nature, attributes and rights of the advertiser (identity and assets, industrial property rights etc.).

The comparative advertising refers to a competitor or competing goods or services explicitly or implicitly, and it is authorized only if it is not misleading according to Article 4 Directive 2006/114 / EC [10]. This type of advertising is totally prohibited under the laws of Italy regarding the mention of rival firms, the comparative advertising is permitted under strict control of the authorities in Belgium, Germany and France, and it is conditional on the use of accurate and provable claims about the competitors in the Netherlands and UK Kingdom.

If the comparative advertising is not misleading, and in compliance with certain rules imposed on the comparisons made, the comparative advertising can be a legitimate means of informing consumers regarding their interest, thus ensuring that they know the market of the product they want. Thus, comparisons should mainly: refer to the goods or services meeting the same needs or intended for the same purpose; compare products that have the same designation of origin; to treat objectively essential, relevant, verifiable and representative features of those goods or services, which may include the price; they should not create confusion among traders, should not discredit, should not imitate or profit from the concurrent names or trademarks.

The Directive 2005/29 / EC [11] also prohibits the unfair commercial practices, the practices contrary to the professional requirements and those susceptible to affect the economic behaviour of the average consumer in relation to the product, considered deceptive practices meant to determine the purchase of the product. Such practices are those in which the seller sends the buyer false or deceiving information that mislead the buyer in order to determine him/her to buy the product, such as causing confusion between one product and another, or the intentional omission of certain information about a product compared to the product in the advertisement.

Among the misleading methods sanctioned by Directive 2005/29 / EC [11] we mention:

1) To advertise for a very cheap product, but not to have a sufficient stock of that product (eg. a large poster with massive reductions in the price of certain foods in front of a shop and the very small mention about the stock

being limited, without having the most popular products and the most expensive ones presented in the discount, but thus causing the consumer to enter that store).

2) To declare that the seller ceases his/her activity, if not true. (i.e. to post that it is a clearance sale due to closure, without this being real).

3) To incite the children to buy or to persuade their parents to buy a product that is being advertised (a type of this kind of process are the figurines that the children should collect and which are to be found in products not intended for children).

4) To assert falsely that the product can cure a disease, to correct a malformation or dysfunction.

5. Conclusion regarding the advertising of food products and the legal constraints

Advertising, in any form and regardless of the media channel of transmission in today's society has become the main means of promoting products / services, which explains the development of advertising agencies and the industry of advertising. Given the emotional side and the educational character that advertising in any form presents- written or video, in conjunction with the capacity of manipulation of the consumer's behaviour, a strict control is required on the advertising products through clear and uniform rules at Community level.

The legal trends regarding advertising standardized in accordance with the Community regulatory restrictions regarding the allegations from the food advertisements, especially those like: *the product provides nutrition that is not available in case of a normal diet* or the product is "pure" is " new ", as well as direct references to the quality of the product: *the product does not contain " additives "; it is "natural" or "produced on the farm"*. *The advertising of a food product by presenting it as being superior to others is forbidden. It is insisted upon that pharmaceuticals should be presented as medicines and not as food or "health products" precisely in order to avoid confusion.*

Other legal measures that are intended to be implemented uniformly regard the advertisements to the products for children, or the TV spots to products in which children are used as actors in order to induce the safe use of the product for children. Banned or strictly controlled are the commercials for products with children because it exploits the inexperience or native credulity of children, or the trust in teachers and parents recommending certain

products. As an example in this case, we have the commercials for Danone products for children in the last 20 years, noting that currently, the TV ads use the images of children only with their parents in the food consumption and the special nutritional qualities for physical development of the children are no longer emphasized, the products being presented as necessary for a correct diet.

Regarding the commercial sponsorship of television programs, influencing the editorial content or encouraging viewers to buy certain products is prohibited by legislation.

6. References

- McCarthy, Jerome E., *Basic Marketing: A Managerial Approach*, published by Richard D. Irwin, Homewood, IL, (1964).
- Fogg-Meade, E., The place of advertising in modern business, *The Journal of Political Economy*, vol.9, pp.218-242, SUA, (1901).
- Epuran, Ghe., *Promotional Techniques – Course, University of Bacau*, (1998), electronic format <https://www.scribd.com/doc/52578429/TEHNICI-PROMOTIONALE>, accessed 15.02.2015.
- Lazoc, R., Lazoc A., Goia, D.C., *Promotional Techniques*, 2nd edition, Eurostampa Publishing, Timișoara (2007).
- Chelcea, S., *The psychology of advertising. About visual ads*, Polirom Publishing, Iași, (2012).
- Piquet, S., *La publicite, nerf de la communication*, Les Editions d'Organisation, Paris, (1983).
- Drăgan, I., *Communication. Paradigms and Theories.*, RAO Publishing., Bucharest, (2007).
- Advertising Law no.148 / 2000 in the currently amended form, act published in the Official Gazette 359 of 08.02.2000, effective from 31.10.2000
- Law no.158 / 2008 concerning misleading and comparative advertising, originally published in the Official Gazette nr.559 / 24.07.2008, republished in its current form in the Official Gazette no. 454 / 24.07.2013.

- Directive 2006/114 / EC of the European Parliament and of the Council concerning misleading and comparative advertising, published in the Official Journal no.L376 /21 of 27.12.2006
- Directive 2005/29 / EC of the European Parliament and of the Council on unfair business practices in the internal market regarding the consumers and amending Directive 84/450 / EEC, of Directives 97/7 / EC, 98/27 / EC and 2002/65 / EC of the European Parliament and of the Council and Regulation (EC) no. 2006/2004 of the European Parliament and of the Council, published in the Official Journal no.L149 /22 of 11.06.2005
- Dobre, C., *Advertising and sales promotion*, material available online <http://www.bocsig.ro/wp-content/uploads/2011/07/c4creativ.pdf>, accessed 20.04.2015.
- Regulation (EU) no. 1169/2011 of the European Parliament and of the Council of 25 October 2011 on informing consumers about foods, amending the Regulations (EC) no. 1924/2006 and (EC) no. 1925/2006 of the European Parliament and of the Council and repealing Council Directive 87/250 / EEC, Directive 90/496 / EEC, Directive 1999/10 / EC, Directive 2000/13 / EC of the European Parliament and Council Directives 2002/67 / EC and 2008/5 / EC of the Commission and of Regulation (EC) no. 608/2004 of the Commission published in the Official Journal no.L304 /18 of 22.11.2011.
- Code of Practice issued by the International Chamber of Commerce in Paris, document available at <http://www.iccwbo.org/Data/Policies/2011/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-English/>, accessed on 25.04.2015.

Acknowledgement

This paper is supported by the Sectorial Operational Programme Human Resources Development (SOP HRD), ID134378 financed from the European Social Fund and by the Romanian Government.