

## **KRS: Illegal Comparative Advertising May Cost up to 10% of Net Sales Revenue**

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**Hungarian laws allow comparative advertising however, strict regulations should be complied with in order that the comparative advertising be actually deemed legal. Therefore, if a company wishes to promote its product or business in such a way as to compare it with a competitor's product, it has to act with extreme caution at the shaping of its advertisement, otherwise it may face heavy fines – up to ten percent of its net sales revenue – said an expert of Kovács Réti Szegheő Law Firm.**

Dr. Zita Tamás elaborated that we call an advertisement – be it a newspaper ad, a TV commercial, online promotion or a PR article – comparative advertising if the originator's advertisement makes another trader or other traders engaged in identical or similar business activity or a certain product or service of such a trader or traders recognizable, which is intended for identical or similar use as the advertiser's product or service presented in the advertisement.

It is important to emphasize, however that there is no difference in merit whether the competitor is named in the advertisement or not provided that the other trader is directly or indirectly recognizable from the representation or other circumstances like, for instance, a characteristic appearance of the product, a characteristic colour used by the competitor or other characteristic marking.

### **Criteria for rightful conduct**

Comparative advertising is rightful only if it compares products meeting identical or similar needs. It is important therefore that the compared competing products should satisfy identical needs and their use should be identical that is, for the customer, they should show a high degree of substitutionability, emphasized the expert from Kovács Réti Szegheő Law Firm.

Apart from that, the advertisement should objectively compare one or more material, definitive, characteristic and verifiable feature(s) of the product, and in case the advertisement includes a comparison of the product prices, the advertiser should present that as well objectively.

Although there is no such expectation from advertisements that they include comprehensive product description, at the same time, when an advertisement highlights any material circumstance in connection with the product, this should be done in such a way as to reflect reality and must not conceal any such circumstances that are needed for its correct interpretation.

### **Requirement of objectivity**

Therefore, such comparison, for instance, is not objective, when a telecommunications carrier conceals such information that the competitor – as opposed to the advertiser – does not require a



loyalty declaration for subscription. The requirement of objectivity, therefore presumes that the material, defining, verifiable, features measurable by methods of the product be contrasted as for instance, comparable are the sales data, reading ratings, circulation data, prices, discounts.

Comparative advertising may, however, never include the comparison of such features, that are determined by subjective taste or preference so the quality of the products may not be compared that is, stating that one is more sophisticated, beautiful, tastier than the other.

According to Dr. Zita Tamás, in addition to the above, it is important to pay attention to the fact that the advertisement may not be misleading. 'Misleading' means that the advertisement includes untrue information about the product or the advertiser, or true facts are presented in such a way as to mislead or be appropriate for misleading the customer and that induces or is appropriate for inducing customers to make such a decision that they would not have made otherwise.

Therefore, an advertisement is misleading when the advertiser misleads the customer, for example, regarding a feature of the product, price, discount, tax or other benefits, licenses of the selling trader, its fees or sponsorships or in respect of the risks of negative legal consequences of the transaction.

### **GVH may impose fines**

Compliance with the above stipulations is controlled by the Competition Authority and in case it deems a comparative advertising to be in breach of the law, it may impose fines. The amount of such fine is, at most, ten percent of the company's net sales revenues realized in the business year preceding the year when the resolution establishing the breach of law was passed. The amount of fine may vary for each case and in such cases the Authority deliberates all circumstances such as, among others, its seriousness, the advantage gained, the market situation and repetition.

During the proceedings, the burden to prove the truth content of the statement constituting a part of the advertisement falls on the advertiser. Statements (for instance, of penetration or reading data) are typically supported by the traders by surveys or results of tests which should be based on representative samples.

### **Statements of market leadership and defamation**

The Competition Authority has its established practice regarding statements of market leadership that is, such cases when the advertiser claims that its product is the cheapest, has the most circulation or listening ratings. In such cases the reliability of the statement should be proven in respect of all competitors or competing products and it should be true and accurate during the entire period of the statement.

In addition to the above, further stipulations of the law should be observed in case of comparative advertising; like the advertisement may not defame the competitor or its product; may not lead to confusion of advertiser with its competitor or its name or product; and may not lead to gaining unfair advantage through another company's name, product or goodwill.



These latter circumstances are examined by the court on the request of the infringed party who may ask the court, among others that the other trader be banned from the illegal practice, be obliged to pay compensation or damages – concluded the expert of Kovács Réti Szegheő Law Firm.