

cover article

Audiovisual content regulations are changing - advertising for food and food supplements

by Gabriela Badescu, Managing Associate Voicu & Filipescu

The code regulating audiovisual content has been recently amended. Among the changes, we mention the fact that minors can no longer be used in food advertising. Also, an important modification provides that the advertising of food supplements must contain the data approved by the authorities. This month's cover article examines these changes and the broader context of these specific regulations.

Food advertising

The National Audiovisual Council of Romania decided that as of August 2017, the minors can no longer be used in food advertising. Consequently, advertising should not encourage excessive consumption of food by using minors aged 3 to 15. Furthermore, advertisements should not imply giving up the consumption of fruit, vegetables, or natural foods.

This decision stems from having noted a lack of nutrition education in society and the responsibility of retailers who promote their foods without considering the degree of judgement of the target consumers.

Several countries have banned children appearing in food advertisements taking into consideration the increase in childhood obesity recorded lately. Another problem is the different reactions of children and adults to advertising, and how kids develop the ability to recognize and understand the ads as a message directed at them.

Sweden prohibited the use of minors under 12, in the UK the restrictions pertain to ads that could endanger the physical, mental, and moral health by taking advantage of the credulity of children, while in France the ads are seen as a way to educate children regarding nutrition. Other countries have established rules on the time of broadcast, such as Greece, which has banned advertisements for toys broadcast between 7 am and 10 pm and a total ban on war toys. On the other hand, Spain considers that such a ban is not democratic.

Advertising for Food Supplements

Unlike drugs where advertising is allowed only for over the counter products - provided that the advertisement material for these products are approved by the National Agency for Medicines, for food supplements the regulation envisages, in particular, their composition, the fact that they do not replace food, nor do they prevent, treat, or cure human diseases.

At EU level, it has been found that, to ensure the highest level of consumer protection and for facilitating the choice between food supplements, uniform regulations are needed to allow trading safe products to the public, with appropriate labeling.

In this respect, the Directive 2002/46/EC of the European Parliament and the Council was adopted on the harmonization of the laws of the Member States relating to food supplements. Directive 2002/46/EC sets binding principles that must be observed in relation to food supplements marketed in the EU by mentioning the vitamins and minerals that can be used in food supplements and the forms that they can take.

In Romania, the first regulations appear in 2002, included in the law on production, transportation and sale of foods.

[The ingredients of food supplements](#)

The main national regulation applicable to food supplements is represented by Order no. 1069/2007 approving the Norms on food supplements which transposes Directive no. 2002/46/EC. According to art. 2 of these Norms, food supplements are defined as the food products whose purpose is to supplement the normal diet and which are concentrated sources of nutrients or other substances with a nutritional or physiological effect, individually or in combination, marketed in doses, such as capsules, pills, tablets, and other similar forms, powder packets, liquid vials, dropper bottles and other similar forms of measurable liquid or powder for use in small quantities.

According to a communication issued to the members of the European Parliament, the Commission considers that the Directive 2002/46/EC is a valid instrument for ensuring that products marketed domestically are safe.

Therefore, food supplements are substances which contain nutrients (macro and micronutrients) and / or other edible substances consumed in specific circumstances, in addition to the usual food intake.

Regulation on advertising for food supplements

As of February 2017, the regulatory code for audiovisual content has brought changes related to advertising and commercials for food supplements. Thus, the information of the product presentation can contain only (i) the data from the product label, box, bottle and/or flyer which were previously approved by the National Institute of Public Health under the Ministry of Health or notified to the Institute of Food Bio-resources and (ii) the nutritional and health details as approved in compliance with the Regulation (EC) No. 1924/2006 on nutrition and health claims printed on foods.

The labeling, presentation and advertising of food supplements must not include any direct statements or suggestions that a balanced and varied diet cannot provide appropriate quantities of nutrients in general. In this sense, to guarantee the presence of sufficient quantities of vitamins and minerals in food supplements, the manufacturer must determine the minimum quantities, based on the daily recommended dose.

To facilitate efficient monitoring of food supplements, the manufacturer, importer or person responsible for placing the product on the Romanian market must notify the Public Health Authority of the Ministry of Public Health and communicate the model label for the product in question, in electronic and folio form.

Advertising of food supplements is allowed only after endorsement of the advertising content by the Public Health Authority of the Ministry of Public Health and cannot make reference to treatments, prevention, diseases. Food supplements are taken to maintain health, promote growth and development of the body.

Also, advertising must comply with legal provisions on misleading trade practices. These practices may be (i) misleading actions by the overall presentation of false information aimed to mislead the average consumer so as to cause buying a product that would not be bought if the information were correct or (ii) misleading omissions if they omit essential information necessary to the average consumer, taking into account the context, information that causes or is likely to cause the consumer to decide to buy a product that they would not otherwise have bought.

Regarding misleading advertising, it is expressly prohibited by law. On the other hand, comparative advertising is considered legal under specific conditions, one being that it should not be misleading and compare products that meet the same needs or intended for the same purposes.

The Romanian Advertising Council

The Romanian Advertising Council (RAC) is a professional, non-governmental, non-profit and independent organization established in 1999. The main activity of the RAC consists of self-regulation in advertising, providing as well copy advice services.

RAC's purpose is to support the advertising industry in Romania, and its activity is based on the Code of Advertising Practice, developed by its members. The Code of good practices in the labeling and advertising of food supplements is a set of ethical rules to be respected by all those involved in advertising and in any form of commercial communication. The Code regulates a set of specific principles for food supplements and is designed

to support business development in Romania. To this end the RAC examines complaints, usually coming from competitors, regarding advertising materials, and mediates the conflict between them and can also apply sanctions.

PRISA

Romanian Business Owners Association in Food Supplements Industry (PRISA) is an active partner of state institutions and member of specialized international organizations. PRISA's objectives are to promote and educate the public and medical professionals about the importance and beneficial aspects of food supplements.

Regarding autoregulation, PRISA created and approved two codes, the Code of ethics and the Code of good practices in labelling and advertising of food supplements, the latter being annexed from December 2013 to the RAC code.

PRISA and RAC actively collaborate on mutual sharing of information on identifying incorrect trading practices, used in commercial messaging on food supplements.

Miscellaneous

Regarding the recent changes, an issue worth mentioning is that the provisions apply only to broadcasters licensed in Romania, not to TV stations licensed abroad. Also, online advertisements cannot be censured under the latest changes. In this context, the final goal of protecting children, and raising awareness on nutrition and the role of food supplements will only be partially fulfilled for now.

For additional details on this material, please do not hesitate to contact us.

Voicu & Filipescu SCA

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: office@vf.ro

Web: www.vf.ro