



# ITALY

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## Country Report

ITALY

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| <b>1. Case Report:</b> | Jury of Advertising Self - Regulation - Case n° 133/2002  |
| <b>Topic:</b>          | Decency in Advertising  |
| <b>Where:</b>          | Istituto di Autodisciplina Pubblicitaria - IAP (Institute for Self-Regulation in Advertising), Milan  |
| <b>When:</b>           | May 21, 2002  |
| <b>What happened:</b>  | <p>A famous Italian fashion company promoted its new clothing collection, on magazines and newspapers, through five different ads: the first showed a girl lying down with her left hand slipped among her legs at the pubis height; the second one showed a boy with his forefinger and middle finger joint before his mouth and his tongue slipped among fingers and outstretched towards the reader; the third showed a model seated with his legs wide apart, wearing only a pair of underpants and keeping one hand on his pubis, with a banana coming out from the underpants; the fourth showed a young girl wearing transparent underwear with her breast uncovered; the last showed the feet of a woman on the bare back of a man: the sandal's high heels were sinking into the man's skin.</p> <p>The whole campaign has been claimed before the Jury of the IAP as infringing the Self-Regulation Code, articles 1 (Fairness in advertising), 9 (Violence, Vulgarity, Indecency), 10 (Religious, moral beliefs and human person's dignity) and 11 (children's and teenager's protection).</p> <p>The Jury admitted the action and found that the ads were exclusively aimed to catch the consumer's attention. Therefore it considered them as not complying with the Code's rules directed to grant protection of absolute and diffused values. In the Jury's view the images were so greatly vulgar and exceeding any limit of decency and good taste that, evidently, they had not any functional link</p> |

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|                 | <p>with the purpose of presenting good qualities and features of the promoted trademark. Furthermore, the ads made an uncalled-for use of woman's body and sensuality, infringing human person's dignity. In addition, since its great diffusion, even minors, particularly sensible in their emotional and psychological sphere, could have been reached by the ads.</p> <p>On these grounds the Jury, declared that the campaign was clearly infringing the prescriptions provided by the Self-Regulation Code, through an unacceptable pornographic content. Therefore, the Jury ordered magazines' editors (signers of the Code, and therefore compelled to respect its rules), to stop any further diffusion of the claimed messages and inflicted the additional sanction of the publication of an abstract of said verdict on their magazines.</p> |
| <b>Comment:</b> | <p>It has to be considered that this campaign has been diffused in other European Countries provoking the same polemical reaction of the public. The actions filed before the local self-regulation board have been admitted and defined with similar verdicts. Consequently, said campaign has become the object of an advertising claim at European level and therefore managed by the European Alliance for Advertising Standard (EASA), as the maximum authority of Self Advertising Regulation competent for cross border complaints.</p>  |

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| <b>2. Case Report:</b> | Jury of Advertising Self - Regulation - Case n° 134/2002   |
| <b>Topic:</b>          | Moral and Religious beliefs protection in Advertising: <i>"No irony about death"</i>   |
| <b>Where:</b>          | Istituto di Autodisciplina Pubblicitaria - IAP (Institute for Self-Regulation in Advertising), Milan   |
| <b>When:</b>           | May 21, 2002   |
| <b>What happened:</b>  | <p>A worldwide famous computer company aired an advertising campaign on TV aimed to promote its new video game. The ad was set in a delivery room where a woman is giving birth to a child. The new born baby beginning a parabolic flying, grows up first into a little boy, then into a teenager, into an adult and finally into an old man when he finishes his "journey" crashing into a grave. A piercing cry makes the sound background during the quick flight slipping through the life's seasons, while the message reads: <i>"Life is short. Play more"</i>.</p> <p>The ad has been claimed before the Jury of Advertising Self-Regulation as infringing the Code, article 9 (Violence, Vulgarity Indecency), article 10 (Moral, civil, religious beliefs and protection of human dignity), article 11 (Protection of minors and teenagers).</p> <p>The Jury stated that the images combined with the sound and the message were</p> |

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|                 | <p>able to deeply debase a subject as serious as birth and death. In fact, the Jury argued that the company through the ad would uphold that said subjects have been used as events comparable for the quickness in their developing to the advertised video game.</p> <p>Therefore the Jury declared that the claimed ad was not in compliance with the Code. Since the company, during this ascertaining procedure had already spontaneously interrupted the campaign undertaking to desist from any further improper use, the Jury has not applied the additional sanction of publishing said verdict.</p> |
| <b>Comment:</b> | <p>Providing its verdict, the Jury confirmed its view, already expressed in previous decisions, that birth and death are events that cannot be used in advertisement messages or for commercial purposes without taking into account the deep meaning that, according to individual moral and religious beliefs, they generally assume to people.</p>   |

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| <b>3. Case Report:</b> | Jury of Advertising Self – Regulation - Case n° 151/2002  |
| <b>Topic:</b>          | Protection of minors in Advertising   |
| <b>Where:</b>          | Istituto di Autodisciplina Pubblicitaria - IAP (Institute for Self-Regulation in Advertising), Milan  |
| <b>When:</b>           | June 4, 2002  |
| <b>What happened:</b>  | <p>A famous Italian motor company aired a TV ad in order to promote its last car model. The spot was set in a shed where four men were inquiring a young man forced on a chair in order to get information on the car model that he let run away by menacing and torturing him.</p> <p>The ad has been claimed before the Jury of Advertising Self- Regulation as infringing the Code, article 11 (Protection of minors). The Jury stated that the violence diffused through the advertisement, if seen by minors, could be able to influence their mind and behaviour and to induce them to imitate such negative attitude.</p> <p>Therefore the Jury declared that the claimed ad was not in compliance with the Code and prohibited the motor company from running the ad before 22:30 p.m., when children, presumably, should not be watching television.</p> |
| <b>Comment:</b>        | <p>It has to be noticed that through said decision the Jury has operated a balanced application of the Code of Advertisement Self- Regulation, settling the opposing interests of parties involved. In fact, the Jury has taken into account: the</p>   |

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|  | <p>advertiser's interest, whose freedom and creativity on communication has to be properly considered, as well as the protection to be reserved to minors, whose balanced psychological growth must be granted. On these grounds, the Jury, in compliance with precedent decisions on the same matter, has delivered a solution that, even if not specifically provided by the Code, appeared adequate for reconciling opposite interests.</p> |
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| <b>4. Case Report:</b> | Authority for Market and Competition - Case n° 10784/2002   |
| <b>Topic:</b>          | Misleading Advertising: Fitness from a Hobby to a Job.  |
| <b>Where:</b>          | Italy – Rome  |
| <b>When:</b>           | May 23, 2002  |
| <b>What happened:</b>  | <p>The Italian Aerobic and Fitness Federation (A) has required action from the Authority for Market and Competition claiming the advertising message diffused on Internet by a sports federation (B) for promoting its activities. The claimant, in particular, pointed out that the message was misleading with respect to those statements affirming that the certificate (diploma) issued by B was the only title to qualify as a trainer, according to the regional laws in force. Furthermore, he pointed out that the inclusion of fitness within sports supervised and regulated by the CONI (National Olympic Committee: the body competent to manage and control the national sporting activities) was totally misleading.</p> <p>The Authority invited parties to provide information and documents referring to the raised questions, in particular with respect to the national and local regulation in force concerning the conditions required to qualify as a trainer.</p> <p>Furthermore, since the ad had been diffused through the Internet, the Authority asked for an opinion of the Communications Commissioner.</p> <p>The comments provided by the federations gave evidence to the fact that the claimed statements were untrue. In fact, the “diploma” attainable through the promoted course was not the only way for obtaining the trainer qualification. Actually, up till now no Region has provided rules specifically aimed to regulate the particular matter. Therefore, no harmonized regulation, concerning trainer's qualification, is available and in force. As to the term “fitness”, it has been assessed that it is commonly used with a generic meaning, i.e. a reference to all those activities directed to maintain or improve a person's psychophysical form. Therefore, fitness cannot be identified with sporting activities falling under the CONI's supervision.</p> <p>On these grounds, the Authority stated that the claimed message was misleading</p> |

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|                 | <p>with respect to both of the raised issues. On one side, the message was misleading since it was able to erroneously convince consumers that according to regional laws a trainer's activity necessarily required the diploma following the promoted course. On the other side, it made the consumer believe that fitness has to be considered a sporting discipline and therefore its practice, as well as its teaching are strictly regulated even by the Statute of B.</p> <p>Consequently, the Authority declared that said misleading outcomes are likely to prejudice consumer's economic attitude as well as to damage competing companies and ordered B to stop any further diffusion of the ad.</p> |
| <b>Comment:</b> | <p>It appears interesting to notice that control of misleading advertising diffused through the Internet requires no new special regulation, but can be granted by involving existing Authorities: the Authority for Market and Competition and the Communications Commissioner.</p>   |

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| <b>5. Topic:</b>      | Protection from Deceptive Advertising: 10 Golden Rules  |
| <b>Who:</b>           | Authority for Market and Competition  |
| <b>When:</b>          | July 2002   |
| <b>What Happened:</b> | <p>In order to offer consumers specific guidelines for protection from misleading deceptive ads the Authority for Market and Competition has recently issued a Decalogue, posted on its web site: <a href="http://www.agcm.com">www.agcm.com</a>.</p> <p>This "<i>vademecum</i>" provides consumers with guidelines aimed to control the fairness of advertising messages, to promote the Authority's checks and to file claiming actions.</p> <p>Said rules may be summarized as follows:</p> <ol style="list-style-type: none"> <li>1) <u>Look at the message</u>: the full text, small printed characters included, must be carefully read and checked, since relevant information could be marginally provided,</li> <li>2) <u>Is it the right price?</u> It has always to be checked if the indicated price is including additional costs (i.e. VAT, shipping taxes, delivery charges, telephone unit costs),</li> <li>3) <u>Mission impossible</u>: pay attention to messages promising miraculous results (this commonly occurs with respect to slimming products or cosmetics),</li> <li>4) <u>Think it over before signing</u>: no standard form should be signed before reading all provided conditions since in some cases the offers may hide a real</li> </ol> |

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|                        | <p>contract,</p> <p>5) <u>The claim is not enough</u>: in order to ascertain the offer's advantage it is advisable to examine the full message assuming all information concerning terms and conditions of the promotion (discount, sale, number of items available, rates),</p> <p>6) <u>Distinguish the heart from the billfold</u>: services supplied by wizards, and fortune-tellers may be very expensive. Furthermore, it does not exist any method able to make more likely to gain with drawing games,</p> <p>7) <u>How much does it cost?</u> Check financing conditions offered for purchasing and for personal loans and mortgage loans (interest rates, period of validity),</p> <p>8) <u>It could be only a fiction</u>: in certain contexts, a hidden advertising may be concealed in an apparent informative or entertainment nature (i.e. press, TV programs),</p> <p>9) <u>Pay attention to dangers</u>: the advertising is required to warn consumers with respect to the eventual dangerous nature of the product. Thus, it is necessary to read warnings provided with the advertising message or into the product's packaging,</p> <p>10) <u>Protection of minors</u>: advertising must necessarily respect a minor's physical and psychological protection. Some advertisements, even though not misleading for adults, may induce minors and teenagers to a dangerous realistic misrepresentation.</p> |
| <p><b>Comment:</b></p> | <p>Consumer protection is developing more and more, especially with respect to the risk of misleading advertisements, whatever mean of communication may be used. As to this purpose, it has to be considered that Italy has been the first country member of the EU to promote (on the April 10<sup>th</sup>, 2002), in compliance with EU Directives n° 95/46 and n° 97/66, the adoption of conduct's and professional practice's codes.</p> <p>Furthermore, the Authority has recently introduced the adoption of temporary measures suspending the diffusion of a claimed advertisement. This in order to counteract the potential negative outcomes of a purported misleading advertising when, pending the procedure, the decision has not yet been enacted. This innovative and more efficient form of consumer protection appears particularly efficient for ads diffused through the Internet, where the potential misleading effects are likely to hit a consistent number of consumers.</p>  |

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| <b>6. Case Report:</b> | Data Protection Commissioner   |
| <b>Topic:</b>          | Spamming: Data Protection on-line.   |
| <b>Where:</b>          | Italy  |
| <b>When:</b>           | June 24, 2002  |
| <b>What Happened:</b>  | <p>A University Professor received an e-mail ad targeted to his e-mail address available on the University's web site. The Professor complained with the Data Protection Commissioner claiming that the advertiser made an improper use of his personal data listed on the University's web site only for institutional, but not for commercial purposes. He also asked for the payment of the administrative procedure's costs.</p> <p>The company declared that, following said complaint, it had included the professor's name into a specific directory provided for those subjects contrary to receive advertising. Furthermore, the company stated that the e-mail address was available on the University's web site and, for that reason, had to be considered as publicly available.</p> <p>On these grounds, the Data Protection Commissioner stated that the possibility of accessing an e-mail address listed on a web site could not automatically lead to consider it as a data available to the public. On the contrary, the specific purpose pursued through publication of certain personal data on the Internet becomes relevant. Therefore, the Commissioner held that in the specific case, the address diffused for a limited purpose, as the institutional one, could not be freely used for sending any kind of e-mail, without the data subject's prior consent. Failing to request and obtain said consent, the advertiser breached the privacy regulation. In addition the Commissioner stated that, instead of including the address in a separate list, the company was strictly compelled to cancel the professor's data and refrain from any further use of said data for commercial communications.</p> <p>The Guarantee ordered the company to comply with said decision and to pay the costs for the procedure.</p> |
| <b>Comment:</b>        | <p>In compliance with the European guidelines aimed to protect personal data on-line, the Italian Data Protection Commissioner has set a clear parameter aimed to check when a data, even if available on the Internet, may be considered public and therefore diffused without the subject's consent.</p> <p>Therefore, not any form of spamming can be legally performed without data subject's specific consent.</p> <p>In compliance with the above-mentioned decision, the Commissioner has recently (July 26, 2002) ordered seven companies working on the Internet (advertising agencies and electronic retailers) to stop any further processing of</p>  |

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|  | <p>personal data included in their databases. The Commissioner found that said companies, breaching privacy regulation, had improperly processed personal data for commercial and promotional purposes without obtaining prior consent.</p> |
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