



ITALY

Dr. Maria Luisa Cassandro

Avv. Giovanni Genta

Avv. Felix Hofer

Studio Legale Hofer Lösch Toricelli



Country Report

ITALY

EALA Meeting – Cannes, France

June 2002

Dr. Maria Luisa Cassandro, Avv. Giovanni Genta, Avv. Felix Hofer

Studio Legale Hofer Lösch Torricelli

1. Legislation	
Topic:	New Ruling on Sweepstakes.
Who:	Italian Parliament
When:	December 2001 (in force since April 12 th 2002)
Where:	Italy
What happened:	<p>Trough Law by Decree n°430 dated December 28th, 2001, the previous regulation has been amended and the following additional provisions have been introduced.</p> <p>Main aspects of the new provisions are:</p> <ul style="list-style-type: none">- The <u>prior authorization from the Ministry for Finance</u> (previously required as a condition for beginning sweepstakes promotion) <u>has been abolished</u> and the following simplified procedure has been introduced:<ul style="list-style-type: none">a) for promotions awarding prizes by chance or skill (so called “concorsi”), companies have to <u>notify</u> their initiative to the competent Ministry for Production filing a standard schedule and submitting the promotion’s Official Rules;b) for promotions awarding prizes to anyone who has bought a certain quantity of a product collecting purchase proofs (so called “<i>operazioni a premio</i>”), companies are exclusively required to provide the Official Rules, certifying their authenticity; said Rules must be kept in the company’s headquarters for consumer’s awareness and shall be stored there at least for 12 months after the end of the promotion.- Sweepstakes promotions may be promoted even from:<ul style="list-style-type: none">(i) foreign companies, without a local branch, trough their fiscal

	<p>representative in Italy;</p> <p>(ii) enterprises joined in partnership on that purpose.</p> <p>(iii) Prizes allowed for sweepstakes promotions shall now include real estates too.</p> <p>(iv) Instead of the Ministry of Finances, the Ministry for Production is now in charge of the control of these kind of sales promotions. Such control may be performed or by the Minister (<i>ex officio</i>) through a sample method, or following the claim filed by whomever is interested in such supervision.</p>
Comment:	The new regulation has greatly simplified the precedent administrative procedure required for beginning and running sweepstakes in Italy. The amending provisions are entered in force, so recently, therefore, in the coming months we will check if said hoped outcome has been effectively achieved.

2. Legislation	
Topic:	Personal Data Processing: “Nouvelle Cuisine, beware of Cookies!”
Who:	Italian Parliament
When:	December 2001 (in force since April 12 th 2002)
Where:	Italy
What happened:	<p>The Law n°675, dated December 31st, 1996 (“protection of people with respect to their personal data processing”), has been recently amended through the Law by Decree n°467, dated December 28th, 2001. rough Law by Decree n°430 dated December 28th, 2001.</p> <p>New provisions have been introduced as to:</p> <p>(i) Data processing in Italy performed by subjects not established in the EU:</p> <p>Local law shall apply to processing of personal data performed by an entity established outside the European Union, where said entity makes use in connection with the processing of equipment, whether automated, electronic or otherwise, situated on the State’s territory, unless such equipment is used only for purposes of transit through the territory of the European Union. In such cases, the controller established outside the European Union, in order to implement local relevant rules, must designate a local representative established in the State’s territory.</p>

	<p>(ii) Cookies:</p> <p>cookies introduced through Non – European web sites and addressed to users sitting in Italy are going under Italian law. Therefore, the data controller, through its local representative, must preliminarily inform the data subject that his/her data are intended to be processed and obtain his/her prior consent on that purpose.</p> <p>(iii) Special areas of data processing</p> <p>Codes of conduct and professional ethic will be introduced in order to grant the lawful and fair processing of personal data collected and recorded through Internet, audiovisual system, direct marketing.</p> <p>(iv) Sanctions</p> <p>Higher administrative sanctions (fines ranging between €2.580 [instead of €51] and €15.500 [instead of €3.098], are applying for violations resulting in illegal communication and dissemination of personal data, sensitive data, and data revealing criminal proceedings brought against the subject.</p>
Comment:	<p>Through the amending Decree the legislator has extended the jurisdiction of the Privacy Guarantee, the Italian Authority competent to grant personal data protection. The basic idea, in fact is that any processing of personal data conducted in Italy is falling under Italian privacy regulation, wherever is located the data controller.</p>

3. Legislation	
Case Report:	
Topic:	Testimonial: “I know who and what I am, but not necessarily I want to tell you”
Who:	The Code of Self Regulation in Advertisement (“CAP”) Jury of Italian Body for Self Regulation in Advertisement
When:	2002
Where:	Italy
What happened:	<p>According to article 4 of the Code of Self-Regulation in Advertisement (“CAP”), ads featuring testimonials must be authentic, responsible and veritable.</p> <p>In compliance with said rule, it’s required to balance the following goals: a) granting the public interest to control the truthfulness of the testimonials statements; b) granting the testimonial subject’s right to privacy.</p> <p>The testimonial subject can freely choose to not reveal hi/her identity while</p>

	<p>performing in the ad. Therefore, producers as well as advertisement agencies are held to protect the testimonial's statements through documentary evidence.</p> <p>The producer or the retailer of the advertised product may perform as testimonial, as long as he/she makes known to the public his/her identity and qualification.</p>
Comment:	Through this statements the Jury has provided for the first time clear guidelines concerning the use of testimonials in order to give effect to the CAP's provisions.

4. Self Regulation	
Case Report:	
Topic:	Comparative ads: Going after the "standard consumer", donkey trap or fax hunting?
Who:	Jury of Advertisement Self Regulation
When:	Case n° 76, February, 22 nd 2002
Where:	Italy
What happened:	<p>A well-known and successful European airline (in the following identified as "A") recently started advertisement of its low cost tickets by comparing its one-way economy fares with the business fares of a leading airline (in the following identified as "B"). The flights compared were presented through the name of the same towns of destination notwithstanding the different airports used by the two companies. The ads run were two:</p> <ul style="list-style-type: none"> - the first showed a picture of a supposed B's single client holding with dismal a tagline indicating the B's fare and beside it a picture of an happy family of four showing with a smile the tag lines of the A's fares; - the second ad showed a single B's client about to drink a cup of coffee with a label attached to indicating "from €362", and beside it a picture of a A's airplane with a label attached to it claiming "<i>the most economic flights</i>". <p>Airline "B" asked the Italian Special Authority (competent on misleading and comparative advertisement to issue an injunction to stop the campaign as being inhomogeneous and despising and therefore in breach of the rules limiting comparative advertisements. Furthermore, airline "B" called the company "A" before the Jury of the Italian Body for Self-Regulation in Advertisement and claimed that the campaign was defaming and incorrect as it compared aspects of the services not homogeneous; it also affirmed that the two services could not be</p>

	<p>compared because differences in prices were justified by a range of- not duly explained – differences of the flights conditions.</p> <p>Airline “A” abandoned the campaign and engaged itself not to perform it again. Therefore the Special Authority dismissed the request of injunction.</p> <p>As to the procedure before the Italian Industry Body for Self Regulation, the Jury, asserted as an (interesting) preliminary statement:</p> <ul style="list-style-type: none"> - that, even if airline “A” had stopped the particular ad, it had to take the case and to provide a decision on the claimant’s objections being there a risk of a new running in the future of the campaign, <p>furthermore, on the merits it held that:</p> <ul style="list-style-type: none"> - one of the essential standard criteria for a fair, directly comparing ad is the homogeneity of goods and services compared, which implies that business fares cannot be compared with economic ones, - in addition, comparison between different kinds of fares for different conditions appear acceptable only if one of the competitor’s doesn’t offer the same range of choices as the competing company with respect to the same kind of service, as in this case the negative implications resulting from the comparison are due to a specific commercial strategy (i.e. decision to not offer a certain service) made by one of the competitors at his discretion, while the other company simply points out to the public such strategy, - in the specific case, the comparison had to be considered as unfair and illegal, since it was not true that airline “B” had no other flights to be selected – even at a higher price – but those airlines “A” referred to in its comparative ad. <p>Therefore, the Jury declared that the campaign resulted as a misleading comparative ad, infringing articles 2 (“Misleading Advertisement”), 14 (“Denigration”) and 15 (“Comparison”) of the Self – Regulation Code. On these grounds, the Jury ordered airline “A” to cease the campaign.</p>
<p>Comment:</p>	<p>Interestingly, in this particular case the Jury of the Italian Industry Self-Regulation disagreed with the English High Court decision with respect to another campaign run by the same airline “A” comparing its fares with those of the leading UK airline. Actually, the British Court considered the ad as not “<i>significantly unfair comparison</i>”.</p> <p>It appears that said verdict was based on the idea that the standard for assessing a comparative ad was a consumer of middle capacity of informing himself and able to evaluate the information provided for commercial purposes.</p> <p>On the contrary, the Italian Jury referred its decision considering as a relevant standard “the uninformed consumer” and therefore held that the assessment of the comparison must be made with reference to the influence the comparison may have on such a consumer.</p>

5. Case Report	
Topic:	Teleshopping: Misleading Body Slim: “Wonder Hot Pants? No just plain sweat!”
Who:	Italian Competition Authority
When:	Case n° 10.372 dated 24 th January 2002
Where:	Italy
What happened:	<p>A consumers’ association has required action from the Authority for Market and Competition (competent on misleading ads) objecting to a teleshopping presentation performed by an Italian company on a local TV station and directed to promote a slimming pant.</p> <p>The product, worn by two young and tiny women moving themselves to the sound of music, was presented as an extraordinary, able to eliminate totally any weight’s problem.</p> <p>The promised slimming effects would be reached simply by wearing the pant that, once in contact with the skin, was claimed to develop a continuous and deep massage and a draining action. Furthermore, the teleshopping has granted that said results should be, without doubt, much higher and quicker than those that could be achieved through a common diet or a fitness program.</p> <p>The Authority, having ascertained that the advertised product had never been tested and that therefore no scientific evidence of its promised effects was given, stated that the message was misleading and ordered to cease any further diffusion.</p> <p>In particular, the decision points out that, as commonly known, no significant reduction of body’s dimension could be achieved without losing weight. Rather as to this purpose, a balanced diet as well as a specific physical activity appears just to be as typical and appropriate remedies. On the contrary, the use of the promoted pant could be considered just as an additional help.</p> <p>Therefore, in the Authority’s view, the promotion appeared likely to confuse consumers about the real characteristics and effectiveness of the product and to exercise a misleading influence on their purchasing behavior. Furthermore, also in this case the Authority’s showed a rather low consideration towards the consumer’s “critical ability” with respect to the praised advantages of the product: in other words, as to the weight losing effects, said ability would result greatly reduced and consumers are thought particularly eager to believe in the promise of the promotional message.</p> <p>Finally, the Authority considered the consumer’s position as truly disadvantaged, because he might be induced to buying the product only by a phone-call, without a chance of achieving a clear awareness of the real features of the product before purchase.</p>
Comment:	As in the past this kind of promotions frequently led to complaints by the public, the Ministry for Communications recently has designated a special Commission

	with the task of drawing a set of rules and guidelines, to be enacted as a Self-Regulation Code. The provisions of said Code should rule control on and grant fairness in teleshopping as well as of ads aimed to promote purchasing offers through TV or Press.
--	--

6 Case Report:*	
Self regulation:*	
Topic:	Decency in Advertisement: “Lipstick, not always and everywhere it’s chic!
Who:	Jury of Industry Self Regulation
When:	Case n°305, dated January 15 th 2002
Where:	Italy
What happened:	<p>A quite famous Italian fashion company has placed an ad in two magazines, in order to promote its new 4 perfumes make-up. The picture showed, on the full page in black and white, a man bare-chested with a towel around the waist tied at the pubis height. Slipped in the towel there was the perfume package having the aspect of a big red lipstick?</p> <p>The campaign has been claimed before the Jury of Self-Regulation as infringing the art. 9 of the Code “Violence, Vulgarity, Indecency”, since the cylindrical shape of the represented object, the vertical position of the package as well as the fact that it was placed over the low stomach, were likely to induce consumers to catch a sexual content of the message, being obvious the allusion to the masculine characteristic. Therefore it could be considered as offensive of the good taste and sensibility of consumers as well as of human dignity.</p> <p>The Jury, admitting the action, argued that indecency and vulgarity in advertisement must be assessed with respect to the immediate decoding of the message as perceived by the public. Furthermore, the Jury stated that the Code’s provisions are directed to protect a target public with an average sensibility. In the campaign there is no any functional link between the message and the advertised object, actually, only symbolism and no suggestion are able to attribute a meaning to the showed picture. Consequently, according to the Jury, said campaign has to be considered as not complying with the prescriptions provided by the Self-Regulation Code.</p>
Comment:	in the Jury’s view such infringement appears to be particularly relevant, as the campaign had been placed on magazines commonly read even from young people and teenager, particularly sensible in catching hints implying sexual meanings.

7. Case Report:*	
Self regulation:*	
Topic:	Disaster or Boomerang ads: “Concentrate on what you’re doing, no cars or magazines while making love!”
Who:	Jury of Advertisement Self Regulation
When:	April 2002
Where:	Milan
What happened:	<p>A German motor company recently placed an advertisement campaign on local newspapers and magazines, aimed to promote its last car model. The picture, printed on full page, showed a blond girl and a blond boy hugged and lying on a double bed with the inferior half of their bodies covered from white sheets. A magazine showing a photo of the advertised car was covering the face of the partner in so close relationships.</p> <p>The day after the diffusion of this campaign, many readers, provoked and surprised by the used mix of motors and sex, immediately reacted, through letters, e-mail and phone calls, addressed to the newspapers’ editorial offices as well as to the motor company, objecting to the campaign.</p> <p>The motor company explained that the advertisement was addressed to a young and unconventional public, already well informed about the technical qualities of cars. For this reason, the company had preferred to use a new advertisement strategy, intended to touch deep emotions. Anyway, the company made immediately its apologizes, but considered not necessary to stop the campaign since its performance was nearly exhausted.</p> <p>Nevertheless, the case provoked a reaction <i>ex officio</i> by the Review Board of the Industry Self-Regulation system for infringement of article 9 of the Code (“Indecency and Vulgarity”). In fact, the Review Board issued a decess order against the car producer and its advertisement agency.</p>
Comment:	As to the public’s reaction. It’s interesting to notice that, while on TV the Italian public seems to be, if not acquainted, at least prepared to seeing rather provocative images and to be able to “metabolizing” them, on the contrary, the impact of an allusive ad in the press appears to hit the consumer’s perceptiveness on a much lower level ant to give raise to angry reactions more frequently.