

**MISLEADING AND COMPARATIVE ADVERTISING
ACT, 2001**

Principal Act

Act. No. 2002-01	<i>Commencement</i>	17.1.2002
	<i>Assent</i>	17.1.2002

Amending enactments	Relevant current provisions	Commencement date
LN. 2002/097 s. 5		17.12.2002
Act. 2008-18 s. 4(1)(a)		13.11.2008

EU Legislation/International Agreements involved:

Directive 84/450/EEC

Directive 97/55/EC

English sources:

None cited

ARRANGEMENT OF SECTIONS

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AN ACT TO REPEAL AND RE-ENACT THE MISLEADING ADVERTISING ACT 1993 AS AMENDED SO AS TO TRANSPOSE INTO THE LAW OF GIBRALTAR EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 97/55 AMENDING COUNCIL DIRECTIVE 84/450 RELATING TO MISLEADING ADVERTISING SO AS TO INCLUDE COMPARATIVE ADVERTISING.

Title.

1. This Act may be cited as the Misleading and Comparative Advertising Act, 2001.

Interpretation.

2. In this Act, unless the context shall otherwise require—

“advertising” means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, and “advertiser” shall be interpreted in like manner;

“comparative advertising” means any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor;

“Minister” means the Minister with responsibility for consumer affairs;

“misleading advertising” means any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor;

“person” means any natural or legal person.

Misleading Advertising.

3. In determining whether advertising is misleading, account shall be taken of all its features and, in particular, of any information it contains concerning—
 - (a) the characteristics of goods or services, such as their availability, nature, execution, composition, method and date of manufacture or provision, fitness for purpose, uses, quantity,

specification, geographical or commercial origin or the results to be expected from their use, or the results and material features of tests or checks carried out on the goods or services;

- (b) the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services provided;
- (c) the nature, attributes and rights of the advertiser, such as his identity and assets, his qualifications and ownership of industrial, commercial or intellectual property rights or his awards and distinctions.

Comparative Advertising.

- 4.(1) A person responsible for comparative advertising shall ensure that it—
- (a) is not misleading contrary to the provisions of this Act or the Consumer Protection (Unfair Trading) Act 2008;
 - (b) compares goods or services meeting the same needs or intended for the same purpose;
 - (c) objectively compares one or more material, relevant, verifiable and representative features of those goods or services, which may include price;
 - (d) does not create confusion in the market place between the advertiser and a competitor or between the advertiser's goods, services, trade marks, trade names or other distinguishing marks and those of a competitor;
 - (e) does not discredit or denigrate the goods, services, activities, circumstances, trade marks, trade names or other distinguishing marks of a competitor;
 - (f) in the case of goods with designation of origin, the advertising relates in each case to goods with the same designation;
 - (g) does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing goods;
 - (h) does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

(2) Where comparative advertising refers to special terms subject to which goods or services are offered, it shall indicate in a clear and unequivocal way—

- (a) the date from which the special terms are to have effect, and
- (b) the date on which the special terms shall cease to apply, or
- (c) that the special terms are subject to the availability of the goods and services,

as the case may be.

Complaints – consideration by Consumer Officer and Designated Persons.

5*(1) The Minister may appoint by notice in the Gazette a Consumer Officer to administer the provisions of this Act.

(2) It shall be the duty of the Consumer Officer to consider any complaint made to him that an advertisement is contrary to the provisions of this Act, unless—

- (a) the complaint appears to the Consumer Officer to be frivolous or vexatious; or
- (b) a person appointed under subsection (3) has notified the Consumer Officer that he agrees to consider the complaint.

(3) Without prejudice to subsection (1), the Minister shall designate by notice in the Gazette, such persons or groups of persons who apply to him for designation and who, in his opinion, have as their sole or principal aim the promotion of interests of consumers.

(4) If a person designated under subsection (3) notifies the Consumer Officer that he agrees to consider a complaint that an advertisement is contrary to the provisions of this Act, he shall be under a duty to consider that complaint.

(5) The Consumer Officer or, subject to subsection (6), a person designated under subsection (3) may apply for an injunction (including an interim injunction) against any person appearing to the Consumer Officer or that person to be using, or recommending use of, an advertisement contrary to the provisions of this Act.

* LN 2002/058 Designates The Gibraltar Regulatory Authority for all purposes connected with the operation of this section.

(6) A person designated under subsection (3) may apply for an injunction only where—

- (a) he has notified the Consumer Officer of his intention to apply at least fourteen days before the date on which the application is made, beginning with the date on which the notification was given; or
- (b) the Consumer Officer consents to the application being made within a shorter period.

(7) The Court, on an application by the Consumer Officer or, subject to subsection (6), a person designated under subsection (3), may grant an injunction or such other order on such terms as it thinks fit: without prejudice to the generally of the foregoing, the court may direct the person responsible for any advertising found to be contrary to the provisions of this Act—

- (a) to publish all or any part of the decision of the court,
- (b) to publish a statement correcting the said advertisement,

in such form and manner, and to such persons, as the Court, in its discretion, may see fit.

(8) The Consumer Officer or, subject to subsection (6), a person designated under subsection (3) —

- (a) may, if he considers it appropriate to do so, have regard to any undertakings given to him or to the Minister by or on behalf of any person as to the continued use of such advertising;
- (b) shall give reasons for his decision to bring or not to bring proceedings as the case may be for an injunction in relation to any complaint which this Act requires him to consider.

(9) Notwithstanding a decision not to bring proceedings for an injunction under subsection (8)(b) any person may bring such proceedings in his own name.

(10) An injunction or other order may relate not only to use of a particular advertisement but to any similar advertisement, or advertisement having like effect, used, recommended or intended to be used by any party to the proceedings.

(11) The Minister may arrange for the dissemination in such form and manner as he considers appropriate of such information and advice

concerning the operation of this Act as may appear to him to be expedient to give to the public and to all persons likely to be affected by this Act.

Evidence of advertising contrary to the provisions of this Act.

6. In any proceedings on an application made under section 5, the Court—
 - (a) taking account of the legitimate interests of the advertiser and of any other party to the proceedings and of the circumstances of the case generally, shall direct the advertiser to produce to the Court such evidence as to the accuracy of the factual claims in the advertising as the Court may require and, in the case of comparative advertising, to require the advertiser to produce such evidence in a short period of time;
 - (b) shall treat as inaccurate any factual claims if the evidence specified under paragraph (a) is not furnished or, if furnished, is found by the Court to be insufficient to substantiate the factual claims in the advertising;
 - (c) shall not, in granting an application, require evidence of actual loss or damage suffered by any person nor of intention or negligence on the part of the advertiser to engage in advertising contrary to the provisions of this Act.

Repeal

7. The Misleading Advertising Act 1993 is hereby repealed.

Rules of Court.

8. The Chief Justice may make rules of Court for the purpose of hearing and determining applications made under section 5 and for matters incidental to so hearing and determining and in respect of the costs thereof.