

RESOLUTION (72) 8

ON CONSUMER PROTECTION AGAINST MISLEADING ADVERTISING

*(Adopted by the Committee of Ministers on 18 February 1972
at the 207th meeting of the Ministers' Deputies)*

The Committee of Ministers,

1. Considering that the influence and scope of advertising for commercial purposes directed to the consumer in the mass production economy have been considerably increased by the combined action of a number of factors, including :

- the development of advertising media,
- the development of sophisticated mass communication techniques,
- continual emergence of new products due to technological progress,
- the increased sums spent on advertising,

- the expansion of markets, not least due to the progressive abolition of international trade barriers, especially in the fields of tariffs and quotas ;

2. Conscious that appropriate advertising is an essential element of the market economy ;

3. Aware, nonetheless, that misleading advertising occurs against which it is important to protect consumers to whom such advertising is addressed, particularly the more vulnerable groups amongst them ;

4. Convinced that for such protection to be effective, misleading advertising must be defined with adequate precision, detected rapidly and repressed efficaciously ;

5. Noting that the repression of misleading advertising can be, and in fact often is, effected under measures taken by public authorities and/or professional organisations ;

- thus in many member States legal provisions against misleading advertising exist in the framework of general legislation - for example, laws on unfair competition, laws on improper marketing, the Civil Code etc. - and/or special legislation - for example on foodstuffs, medicaments etc. ;

- and in a number of member States there are, besides, professional codes in the matter of misleading advertising, as well as professional bodies responsible for securing the observance of these codes ;

6. Observing that both the content and the efficacy of these two categories of provisions vary considerably from one country to another ;

7. Recognising that existing discrepancies between national provisions are due to a large extent to differences in habits of thought, legal concepts, economic circumstances and commercial practices in the countries concerned so that complete harmonisation in this field, however desirable, can therefore hardly be achieved at the present time ;

8. Considering that it is nonetheless desirable - in view both of the increase in international trade and of the difficulty of preventing misleading advertising by firms located abroad - that a common base should be sought for the protection of consumers against misleading advertising ;

9. Convinced that statutory rules accompanied by sanctions are required, notwithstanding the existence of professional codes ;

10. Considering, however, that whatever laws and regulations be adopted to give effect to these principles, they should be left to the decision of member States' own authorities, in the light of their special problems, experience and traditions ;

11. Having regard to the report accompanying this resolution,

Recommends the governments of member States :

1. That member States should take in such manner as is compatible with their legal concepts, all measures necessary to introduce into their national legislation, comprehensive provisions, where such provisions do not already exist, which have the effect of prohibiting in any form or medium advertising which directly or indirectly is likely to mislead consumers of the advertiser's goods and services in such a way as to influence their decision to avail themselves of those goods and services, including in particular advertising which is likely thus to mislead with regard to :

- the nature, composition, origin, quantity, qualities, date of manufacture or properties of the goods or, so far as is relevant, services described by the advertisement ;

- the total price actually to be paid by the consumer for the goods and services offered or any favourable comparison made by the advertiser with other prices ;

- the identity, qualifications or competence of producers of goods, traders, or suppliers of services ;

2. That insofar as special provisions may be appropriate in respect of advertisements for particular categories of goods or services or advertisements related to particular methods of sale, member States should take all measures necessary to introduce into their national legislation such supplementary provisions against misleading advertising where such provisions do not already exist ;

3. That member States should give attention to the special aspect of radio and television advertising, in view of their very wide audiences and their power of penetration ;

4. That member States should ensure, in a manner compatible with their own legal concepts :

- that besides advertisers, advertising agencies and media may be held responsible, individually or together with the advertisers, where they have knowingly committed or contributed to a breach of the legislation against misleading advertising ;

- that the penalties which their legislation provides for misleading advertising are severe enough to act as a deterrent.;

- that in order to terminate acts of misleading advertising as soon as possible, adequate means exist to obtain compliance with the legislation whether at the instance of public authorities, consumers, consumer, trade or professional bodies or otherwise ;

5. That with a view to eliminating misleading advertising, member States should encourage :

- the setting up by the appropriate professional organisations of codes of fair advertising practice such as that of the International Chamber of Commerce ;

- the setting up of such self-disciplinary bodies or the adoption of such other methods of self-discipline as may be appropriate ;

- co-operation between public authorities and self-disciplinary bodies or professional organisations ;

- mutual assistance between self-disciplinary bodies or professional organisations in different countries ;

- co-operation between self-disciplinary bodies or professional organisations and consumer organisations in whatever way may be appropriate in their respective countries.