

## Particularities of the Legal Framework of Marketing in Romania

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### Abstract

Legal framework of marketing includes all legal regulations concerning the marketing activities of the companies. It is an element of macro environment namely the political and social environment. At the international level, differences in legislation relating to the field of marketing are significant. In Romania there are some particularities in the legal framework of marketing. Using a secondary research of romanian marketing legislation we obtaining results consist in the most important acts which target different parts of the business of marketing.

**Key words:** legal marketing, deceptive marketing, differences marketing legislation.

**JEL classification:** M38.

### Introduction

The legal framework of marketing includes all legal regulations concerning the marketing activities of the trader and is an ingredient in the company macro environment defined in different ways in the scientific literature: the political and social environment (Armstrong and Kotler, 2015), political-legal environment (Kotler, Keller, 2009) or institutional environment (Balaure et al. 2002). First studies that made the link between marketing and legal matters dating from the '30 years. (Vaile and Filipetti 1934). The relation between marketing strategy and marketing legislation was studied since years '60 and the "optimal strategy" might recognize the need for competition to satisfy state and federal antitrust officials (Alexis, 1962). The need to regulate this area occurred as a result of unfair practices and that induce consumers to deceive, used by manufacturers, distributors or representatives of the media. Marketing activity is subject to social criticism according to which some marketing practices inimical to the interests of individual consumers and society in general by determining the level of increase in prices due to unreasonably high costs of distribution, promotion and commercial additives raised by selling pressure seen especially with the use of salesmen, through deceptive practices consisting of price, promotion and packaging misleading by promoting products unsafe or of inferior quality, the fraying moral planned due to premature aging products, and let the customers with small businesses unprotected. These methods constitute the essence of the concept of deceptive marketing or deceptive counterfeit (Zang, J., Zang, R.Q., 2015), which along with the use of legal, but improper marketing techniques, can create a negative image on the entire field. The impact is felt by the consumer in different ways: high prices due to high costs of distribution and product promotion; deceptive practices on price, promotion and packaging; using aggressive sales channels like personal sales agents; unsafe products and services of lower quality.(Istudor, Ion, Turek 2008)

## Paper Body

At the international level, differences in legislation relating to the field of marketing are significant (Pop et al, 2011). For this reason the institutional environment is often in a real barrier penetration of foreign enterprises on the national market. Thus, for example, the lack of regulations regarding the protection of trade marks and patents of invention may make that country to be avoided by foreign investors. The most significant differences are those relating to the use of promotional techniques, even in some countries which do appear in the same economic group (Harris, 1999) For example promoting sales using the method of reducing the price for the next purchase is not allowed in Germany or Denmark but is accepted in the rest of the European Union. Free prize draws are common remuneration practices in promoting clients used in the UK and many other countries; in Norway this type of marketing campaign is forbidden. In countries with significant cultural differences the acceptance of promotional messages that make an attempt on the traditional values is very difficult for the local authorities to deal with. In the process of regulating the activities of trade were taken a series of international rules which have facilitated the international movement of goods and services (Keegan, Green 2006). It would be inconceivable the international marketing in the absence of international regulations such as INCOTERMS on terms of payment and delivery of products, the TRIPS Agreement on aspects of intellectual property rights related to trade, the Green Paper on combating counterfeiting and piracy in the European Union and other such regulations.

In Romania, the field of marketing was developed at the beginning of 90 years and is not strictly regulated by a special law, but were adopted several laws direct or indirect relating to marketing. The same situation is in USA for example, but the first regulation is since 1880, Sherman antitrust law. Now, in USA, there are more than 20 important regulation in the field of marketing, many of those without correspondent in Romanian legislation.

American marketing regulation	Romanian marketing regulation
The Patent Act of 1790 was the first federal patent statute of the United States.	Law 64/1991 on the patent (Law 102/1906, first Romania patent law)
Sherman antitrust Act of 1890 and The Clayton Antitrust Act of 1914 Prohibits monopolies and activities that restrict trade or competition in the US Interstate Commerce	Law 11/1991 on combating unfair competition completed with Law 298/2001
The Pure Food and Drug Act of 1906 is the first consumer protection laws in the 20th century and led to the creation of the Food and Drug Administration	National Medicines Agency (ANM), established by Government Ordinance no. 125/1998 completed with Law no. 266/2008 (Pharmacy Law) and Law no. 95/2006 on healthcare reform
The Federal Trade Commission Act of 1914 established the Federal Trade Commission and monitors and regulates the unfair trade forms	There is no special law in this regard. Apply the law of unfair competition
The Robinson–Patman Act of 1936 (or Anti-Price Discrimination Act) that prohibits anticompetitive practices by producers, specifically price discrimination. Regulates the application of discounts depending on the amount purchased.	There is no special law in this regard. Apply Competition Law. 21/1996
The Wheeler–Lea Act of 1938 unfair or deceptive acts or practices as well as unfair methods of competition	Law 367/2007 on unfair practices
The Lanham (Trademark) Act 1946 prohibits a number of activities, including trademark infringement, trademark dilution, and false advertising.	Law 84/1998 on marks and geographical indications and the entire legislative package on consumer protection in Romania
The Fair Packaging and Labeling Act on 1966 is a U.S. law that applies to labels on consumer products.	There is no special law in this regard. Apply HG nr. 106/2002 din 07/02/2002 with a several modifications.

The Child protection act of 1966	LAW no. 272 of 21 June 2004 on the protection and promotion of children's rights but without marketing reglementations.
The Federal Cigarette Labeling and Advertising Act of 1966 (known as The Cigarette Act) is a comprehensive act designed to provide a set of national standards for cigarette packaging	Law no. 15/2016 and Law 349/2002 to prevent and combat tobacco consumption.
The National Environmental Policy Act (NEPA) of 1969 is a United States environmental law that promotes the enhancement of the environment and established the President's Council on Environmental Quality (CEQ)	Environmental Protection Law no. 137/1995 with a several modificat but but without marketing reglementations
The Consumer Product Safety Act (CPSA) of 1972 An Act to protect consumers against unreasonable risk of injury from hazardous products, and for other purposes.	OG 21/1992 on consumer protection and other 22 reglementation
The Magnuson–Moss Warranty Act of 1975 An Act to provide disclosure standards for written consumer product warranties against defect or malfunction	
The Children's Television Act of 1990 which was designed to increase the amount of educational children's programming on television.	Audiovisual Law no. 504/2002 and Decision no. 220/2011 on the Audiovisual Content Regulatory Code modified by CNA Decision no. 63 of 14 February 2017
The Nutrition Labeling and Education Act of 1990 The law gives the Food and Drug Administration (FDA) authority to require nutrition labeling of most foods regulated by the Agency; and to require that all nutrient content claims (for example, 'high fiber', 'low fat', etc.) and health claims meet FDA regulations.	There is no special law in this regard. Apply HG nr. 106/2002 din 07/02/2002 with a several modifications.
The Child Online Protection Act (COPA) 1998 It details what a website operator must include in a privacy policy, when and how to seek verifiable consent from a parent or guardian, and what responsibilities an operator has to protect children's privacy and safety online including restrictions on the marketing to those under 13	There is no special law in this regard. Apply Law no. 272/2004 on the protection and promotion of the rights of the child with a several modifications but not in online
The CAN-SPAM Act of 2003 Controlling the Assault of Non-Solicited Pornography And Marketing Act establishes the United States' first national standards for the sending of commercial e-mail	There is no special law in this regard. Apply Law no. 272/2004 on the protection and promotion of the rights of the child with a several modifications but not in online
The Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 An Act to promote the financial by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.	There is no special law in this regard Apply OG 21/1992 on consumer protection

**Table no. 1 Differences of American and Romanian marketing legislation**

Source Armstrong and Kotler, 2015

A great opportunity of romanian marketing legislation was the implementation of european legislation result of UE integration. But, in fact, the modification oh legislation is a real threat to business because the sevaral modifications cause instability and unpredictibility. For example, the Law 31/1990 (the most important law organizing companies) was modified by Law 33/1998, Law 1066/2004, Law 302/2005, Law 85/2006, Law164/2006, Law 441/2006, OUG 82/2007, OUG 52/2008, Law 88/2009, OUG43/2010, OUG 54/2010, OUG 90/2010, Law 202/2010, OUG 37/2011, Law 71/2011, OUG 2/2012, OUG 47/2012, Law 187/2012, Law 76/2012, Law 152/2015. In total 21 major modifications in 27 years whit a large implications

for companies activity. Very important is that modifications includes all articles of initial law. The same situation is in the marketing legislation.

Using a secondary research of romanian marketing legislation we obtaining the following results consist in the most important acts which target different parts of the business of marketing: Law 48/1992 Broadcasting Law and Decision of the National Council of Audio-visual, Ordinance 21/1992 on consumer protection, Law 32/1994 on the sponsorship, the Competition Law 21/1996, Law 8/1996 on copyright and related rights , Law 65/2000 regarding the adoption of standards for advertising, teleshopping and sponsorship in broadcasting, Law 148/2000 on advertising, Law 677/2001 regarding the processing of personal data, Law 365/2002 on electronic commerce, Law 506/2004 regarding the processing of personal data and privacy in electronic communications, , Law 158/2008 on deceptive advertising and comparative advertising, Law 185/2013 regarding the location and approval of means of advertising.

In some fields such as marketing of tobacco and alcoholic beverages, products that are released on a medical prescription basis, the laws listed above are subject to special conditions. Thus, for example, is explicitly prohibits advertising for tobacco products distributed under the radio broadcasting and television, in print and on the first and last cover page or on tickets for travel within public transport or Law 208/2016 regulating the marketing of breast milk substitutes. In other areas, such as financial, banking capital market, tourism etc. the components of the mix of marketing are regulated by specific rules issued by the authorities in monitoring such markets.

A particularity of romanian marketing legislation, for a number of areas, such as copyright, is not the absence of the regulations but an inefficient monitoring of the market by the authorities, because the law has been developed since 1996. This has not prevented that more than 80% of the total sales of soft sites in Romania to be counterfeit with very serious implications on the whole industry in years '90. Now the rate of rates unlicensed software installation are decreasing in Romania but comparative with TOTAL European Union and global there are significant differences (see table 1). and totalized 161 mil\$ loss in only in 2015 for romania market.

Stage	2012	2013	2014	2015
Romania	65	63	62	60
EU	35	33	31	29
Global	43	42	43	39

*Table no. 2 Major differences of rates unlicensed software installation*

Source: BSA GLOBAL SOFTWARE SURVEY MAY 2016

[http://globalstudy.bsa.org/2016/downloads/studies/BSA\\_GSS\\_US.pdf#page=5](http://globalstudy.bsa.org/2016/downloads/studies/BSA_GSS_US.pdf#page=5)

## Conclusions

In conclusion the marketing activity in Romania is direct influenced by specific legislation. The development of marketing field in Romania was very rapid but the implementation of legislation is not so rapid. However regulations aimed at the field of marketing in Romania are not complete, imposing the necessity to adopt laws to regulate, for example, the legal system of direct marketing, advertising through the Internet and antispam legislation, the conditions for the conduct of campaigns to reduce prices and other components of the business of marketing.

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