THE PROTECTION OF THE CONSUMERS’ RIGHTS REGARDING ONLINE MISLEADING AND COMPARATIVE ADVERTISING IN THE CONTEXT OF THE EUROPEAN UNION STRATEGY

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Abstract
The development of the Internet as a new communication medium between companies and consumers has outlined in time a number of unique benefits for the marketing promotional strategy, but it also outlined several disadvantages often related to the violation of the consumers’ rights.

Using online marketing techniques and instruments for promotion has entailed not only the need to adapt the companies’ messages to the Internet characteristics, but also the need to know, comply and enforce a legislative framework regarding both the regulation of the traders’ activity and the defense and guarantee of the consumers’ rights. This paper aims to analyze through an exploratory research, based on the investigation of secondary sources as a data collection method, the main aspects relating to the breach of the legislation in effect by the companies that integrate online media in their advertising campaigns and also to determine the impact of their actions on the consumers.

By correlating with the text of the European Union consumer policy strategy, the research focuses on studying some examples of misleading and comparative advertising campaigns conducted both online and offline in our country, that have violated the provisions of the directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006, transposed into law no. 158/2008 adopted by the Romanian Parliament and published on July 24, 2008.

The main results of the article emphasize the need to improve the consumers’ experiences in the online environment by eliminating their distrust and removing any damages that they may suffer due to misinformation and unfair commercial practices. Hence, adapting to the digital age requires more attention from traders on ensuring consumer safety and providing a positive online experience.

Keywords: misleading advertising, comparative advertising, online advertising, protection of consumers’ rights, unfair commercial practices.

JEL Classification: M37, M38.

1. Introduction

Advertising has experienced over the years a continuous evolution, visible especially in the variety of forms and communication media through which the companies’ message can be sent to consumers. In the present context of the informational assault and the struggle for the consumers’ attention, it has become increasingly clear to companies that their promotional efforts require an adaptation from mass communication to individual communication. Thus, the development of alternative media, like the Internet, has overtaken the media thanks to innovative ways of making the companies’ messages known, as well as attracting the consumers’ attention.

In the case of Romania, advertising on the Internet is relatively recent, with origins in the year 2000 (Platon, 2008) [27], but in a short period of time, the online environment has transformed itself from a neglected
sector, to which it was paid little interest in the early years, “into a real industry, which is important to be given the same attention and importance, both by advertisers and readers” (Andronache, 2013a) [2].

According to the study ROADS (Romanian Online Advertising Study) conducted by PricewaterhouseCoopers Romania and the Internet Advertising Bureau (IAB) Romania, the total value of the Romanian online advertising market in the year 2012 was of 22,4 million euros (98.6 million lei), indicating an increase of 7% compared to the year 2011 (Andronache, 2013a) [2]. For the first semester of 2013, according to the same study, the value of online advertising market in Romania was over 10,3 million euros (45.5 million lei) (Andronache, 2013b) [3].

The continuous development of this advertising sector has entailed a constant improvement in the promotional practices of traders and an adaptation to the specific online environment, however, has seen a number of deviations and violations of rules and regulations with regard to addressing consumers and disregarding their rights. On the Internet it is delivered a large volume of information, “which in some cases are not correct, but which decisively influences the consumer” (Dina, 2013) [17]. The use of misleading advertising forms or transmission of messages designed to mislead consumers are examples of incorrect practices in the promotional campaigns of companies from various sectors of activity, which will be presented and analyzed in the third part of the paper.

Therefore, both in the precursory period and after Romania’s integration into the European Union (EU), the legislative framework has aimed to regulate the traders’ activities so as to not unduly harm consumers’ rights, while the work of the supervisory authorities in the field protecting the safety and economic interests of consumers is still facing very important challenges.

The purpose of this paper is to identify the types of deflections performed by Romanian companies, the starting assumption being that although the national legislation states specific clauses regarding misleading and comparative advertising, there are still some notable examples of companies making use of these practices in the detriment of consumers’ rights.

2. The protection of the consumers rights in the context of the European Union strategy

“Consumer protection means the promotion and defense of the consumers’ fundamental rights” (ANPCPPS Romania, Infocons Magazine, 2009) [5]. This can be accomplished either “through individual self-protection, or through direct protection (regulatory, supervision and monitoring activities) and indirect protection (informing and educating consumers). In Romania the ability of self-protection is low on the one hand, due to the low level of informing and educating consumers and, on the other hand, due to the incapacity of the existing associations to carry out effective programs and campaigns” (ANPCPPS Romania, Infocons Magazine, 2009) [5].

In the context of new changes driven by the Internet integration in marketing and commercial activities, the main difficulties encountered were caused by non-observance of the consumers’ rights which have given rise to a sense of distrust on the part of users. While the technological means are increasingly accessible and record an uptrend, consumers are still suspicious, and their openness to online commercial actions exhibit a considerable delay, being postponed by a lack of confidence. Thus, it has become necessary “a radical overhaul of the rules for consumers”, so they would be inspired with “a new sense of confidence and the world of electronic procurement to become a secure commercial space” (Anon., Infocons Magazine, 2008) [4].

After our country’s integration into the EU, national legislation has been harmonized with the series of proposed EU directives to regulate consumer protection, but also to regulate the activity of traders, in order to ensure protection of all Romanian consumers against dishonest practice through direct protection.

At the same time, the European Commission (EC) has drafted for the EU Member States a strategy for consumer protection policy regarding the period 2007-2013. It is considered that this can have an important contribution in changing consumers’ distrust, two of its objectives being “to provide more power to EU consumers through accurate information, market transparency and through the confidence that stems from their efficient protection”, but also “to protect consumers effectively from the risks and threats that they cannot prevent as individuals” (EC, 2007) [14].

According to this strategy, “confident, informed and skillful consumers are the engine of economic growth. Consumers’ confidence, informing them and granting great powers constitute the engine of economic change because consumers’ choices drive innovation and efficiency” (EC, 2007) [14]. The consumers’ main role regarding the relationship with producers being well-known, any method of their misinformation can be translated through negative effects on companies’ activity.

In the spirit of “the European fundamental values of fairness, openness, solidarity, sustainability and transparency”, consumers “need real choices, accurate information, market transparency and the confidence based on effective protection and solid rights” (EC, 2007) [14]. All this may represent opportunities for optimal development of the companies, only those which react having the opportunity to benefit from the long-term advantages.
The essence of success in the online environment is to build “a framework wherein consumers can rely on the basic premise that safety is assured and that tools are in place to detect failings in standards and practices and to address them effectively” (EC, 2011) [16], so that dishonest traders will be excluded.

“Consumer protection policy is found more and more in the center of the main challenges faced by citizens, economy and societies” (EC, 2007) [14]. Therefore, the successor program in the field of consumer protection, corresponding to the period 2014-2020, will have a budget of 197 million euros (EC, 2011) [15], confirming that the EU puts consumer protection among its priorities.

3. Misleading and comparative online advertising - legislative and marketing approaches

In the case of companies “advertising is a vital way to make the products and services they offer known. Under the conditions of high competition, products no longer rise from the ranks just by their characteristics, having regard to the need for a more intensive promotion. In this sense, the advertising stands out by being an effective way of communicating messages about promoted products/services and influencing consumer preferences, obtaining the adhesion or stimulating the buying decision” (Tuica, 2011) [34].

Adaptation of advertising to the online environment involves pursuing the same goals as in the offline environment, but using specialized means of communication and techniques. In concept, online advertising can be defined as “a direct communication, through which the organization sends to a general or specified audience information relating to the products and services or its brands, events it is involved in or about itself” (Vegheș, 2003) [35].

Currently, “the e-mail, banners, interactive television, web conferences, blogs, digital audio and video files, search engine marketing, interstitial pop-ups (pop-up additions) and online communities have become effective mechanisms for the distribution of promotional messages” (Gay, Charlesworth and Esen, 2009) [20]. Basically, the types of web publications in which ads can be added are extremely numerous, ranging from social media websites, blogs, communities websites, portals, and results pages of search engines, up to newsletters or emails (Charlesworth, 2012) [10].

In terms of the objectives of an online advertising campaign, they can be divided into three subgroups (Charlesworth, 2012) [10]:
- obtaining a direct response from consumers: the pursued action is not necessarily a sale but also the involvement or participation in a promotion;
- generating searches: advertising means convicting consumers to actively look for more information about the products or companies;
- branding: by means which reinforces consumers’ perceptions about a brand, an organization or a product through frequent exposure to promotional messages.

The unique advantages of online advertising sector are undertaken primarily through increased interactivity between the sender of the message and its receiver, through extensive, creative possibilities, through high controlling and measurability, through flexibility, but also through the benefits of lower costs and reduced deployment time.

On the other hand, the disadvantages of this medium appear especially because of the risks to which the consumers are subject to. The obstacles regard not only consumers’ distrust, but also inappropriate behavior of traders, translated by unfair commercial practices.

In order to counteract these shortcomings at European level, it has been implemented the Directive 2005/29/EC, transposed in Romania through Law No. 363/2007 on combating unfair practices of professionals with consumers and harmonization of the legal provisions with European legislation regarding consumer protection. According to it, unfair commercial practices are, in particular, those being misleading, represented by misleading actions or omissions, and those being aggressive (harassment, coercion, including through the use of force or undue influence).

To regulate advertising activities at European level, it was created the Directive 2006/114/EC, transposed in Romania through Law No. 158/2008 relating to misleading and comparative advertising, as amended by Law No. 202/2013.

According to this law, misleading advertising is “advertising which in any way, including by way of presenting, induce or mislead the persons to whom it is addressed or who take contact with this and which, because of the misleading quality, may affect their economic behavior or which, for this reason, harm or may harm a competitor” (Law No. 158/2008) [25]. According to article 4 of the law, this kind of advertising is forbidden in our country.

The law specifies that comparative advertising is “advertising that identifies explicitly or implicitly a competitor or goods or services offered by him” (Law 158/2008) [25], this form of promotion being considered legal if it meets in cumulative basis, a number of conditions laid down under article (art.), 6 from a) to h).

Having known the legal perspective on misleading and comparative advertising, it is necessary to address this subject from the perspective of marketing specialists.
Hereby, numerous definitions of misleading advertising have been given in the scientific literature (Russo, Metcalf and Stephens, 1981) [31], but they share a common core: all of them affirm that “for an advertisement to be misleading it must assert or imply something that is objectively false” (Shimp and Preston, 1981) [32]. Consequently, specialists Grunert and Dedler (1985) consider that these definitions imply a comparison either between “objective product characteristics” and the advertising message itself or between the same characteristics and the product’s “subjective representation in the consumer's mind” [21]. This second view “has gained wide acceptance”, because the consumer’s perception has a greater chance of influencing his behavior than the manifest message (Grunert and Dedler, 1985; Russo, Metcalf and Stephens, 1981) [21]-[31].

Nevertheless, the memory representations created as a result of a given advertising message will be particular for each consumer type, idea which has been defined in literature as “dealing with the pragmatic implications of advertising messages” (Harris, 1977) [20].

Authors Grunert and Dedler (1985) point out in their paper that two problems appear in this case. In the first instance, the collocation “pragmatic implications” might be deceiving by itself [21]. The authors refer to the origin of the term which they believe to be linguistics, which differentiates between the obvious content of a message and its pragmatic implication; however, this delimitation obscurs the fact that “pragmatic implications always exist” (Grunert and Dedler, 1985) [21].

In the second instance, in the case in which the process of pragmatic implication is ever-present, and the implications are distinct among consumers (due to discrepancies in cognitive structure), there will always exist “a consumer whose memory representation differs from the objective product characteristics. In this sense, all advertising would have to be considered misleading” (Russo, Metcalf and Stephens, 1981) [31].

There are three types of concepts to measure the advertising’s quality of being misleading which will be presented in the following lines (Grunert and Dedler, 1985) [21]:

• the first comprises concepts according to which “experts” have to assess whether an advertisement can be considered as misleading or not (Brandt and Preston, 1977; Cohen, 1980; Eighmey, 1979) [9]. It is clear that such methods are highly subjective and are not in conformity with scientific standards.

• the second type encompasses concepts where consumers themselves are given advertisements in order to rate them according to their perceived quality of being misleading (ex: Haefner, 1972; Ford, Kuehl and Reksten, 1975; Schutz and Casey, 1981). Such approaches can be criticized because if a consumer believes that an advertisement is not misleading, he “has in fact not been deceived” (Grunert and Dedler, 1985) [21].

• the third type is the most present in the theoretical discussion and is the one where the quality misleading is established according to the impact advertisements have on certain cognitive variables of the consumer (Aaker, 1974) [1].

Beside these, we have encountered in the literature “the misleading components approach” which presupposes “basic research to isolate certain techniques or elements repeatedly used by advertisers which might be potentially misleading, and investigate whether in fact they are so” (Grunert and Dedler, 1985) [21].

The same authors of the article cited above propose two criteria against which the various perspectives on misleading advertising can be held:

• “if a social science approach to misleading advertising is to be useful for practical consumer policy, it has to concentrate on the causes of misleading, and not on the determination of individual cases” (Grunert and Dedler, 1985) [21] - this conclusion was drawn because until 1980s the approaches to the term in discussion dealt with the detection of the quality of being misleading, but not with its causes.

• “a comparison between objective product characteristics and subjective beliefs is not suitable for the detection of misleading advertising” (Grunert and Dedler, 1985) [21] – this statement is based on the previous discussion on pragmatic implications of advertising messages.

Other researchers propose the term “unjust advertising” regarding which there are three alternative views: fraud, falsity, and misleadingness (Russo, Metcalf and Stephens, 1981) [31]. “These views parallel the three components of an advertising communication: the advertiser, the message itself, and the resultant consumer beliefs about the advertised product” (Russo, Metcalf and Stephens, 1981) [31].

Fraud focuses on the advertiser and refers to a “deliberate intent to create false beliefs” regarding the product (Attas, 1999) [8]. This approach is not considered to be valid or practical, because the intent of the advertiser may be irrelevant when it is in discussion “the harm done to consumers” and also because the requirement of proving the intent makes it difficult to take action against the ad, and therefore stop the prejudice done to consumers (Russo, Metcalf and Stephens, 1981) [31].

Falsity in advertising makes reference to the existence of a discrepancy between the claim and the fact (Russo, Metcalf and Stephens, 1981) [31]. So as to demonstrate advertising falsity, “one must verify the existence of a discrepancy” (Attas, 1999) [8]. The most common approach is represented by using “expert testimony”; but, unfortunately, “experts do not always agree” (Russo, Metcalf and Stephens, 1981) [31].

The third view, misleadingness, concentrates only on consumer beliefs (Attas, 1999) [8]. In order to prove misleadingness it is required the observation of false consumer beliefs in conjunction with exposure to the
advertisement (Russo, Metcalf and Stephens, 1981) [31]. While falsity refers to a difference between the claim and the fact, misleadingness regards a belief-fact discrepancy (Attas, 1999) [8].

The second concept in discussion, comparative advertising is considered to be “any form of advertising that explicitly or by implication identifies a competitor or goods or services offered by a competitor” (Emons & Fluet, 2003) [19]. The purpose of a comparative advertisement could be to associate brands or to differentiate brands (Soscia, Girolamo & Busaca, 2010) [33]. It was illegal in most of the European countries until the late 1990s. By contrast, in the United States comparative advertising has been permitted and encouraged by the Federal Trade Commission (FTC) since the beginning of the 1970s (Emons & Fluet, 2003) [19]. Later, a EU directive created in 1997 changed the situation by legalizing comparative advertising subject to the restriction that it should not be considered misleading (Soscia, Girolamo and Busaca, 2010) [33]. Therefore, “European Competition Authorities incline nowadays to agree with their American counterparts over the fact that comparative advertising is an important tool in promoting competition” (Emons & Fluet, 2003) [19]. Comparative advertising increases consumers’ information about alternative products. It allows them “to evaluate the performance of particular products against other products, thus enabling more informed purchasing decisions” (Soscia, Girolamo & Busaca, 2010) [33].

Comparative advertising, which directly compares the same attributes of two or more brands, has often been claimed to be “the most effective tool to communicate the different advantages of a brand” (Muehling et al., 1990) [37]. Through comparative advertising, “superior corporations carve out better market positions and differentiate themselves from the homogeneity that characterizes modern markets” (Muehling et al., 1990) [37].

Although a number of studies have been published on this topic, the potential differentiating effect of comparative advertising on consumers’ perceptions remains nevertheless deeply unclear and understudied and remains a point of contention among scholars and practitioners.

As regards control of the advertising action, it is achieved in Romania by a number of authorities, ranging from the National Audiovisual Council (NAC) to Romanian Advertising Council (RAC), organization which has developed a code of practice in advertising, “conceived as a set of ethical rules to be observed by all those involved in the field of advertising, and in any form of commercial communication in order to ensure a correct, honest and decent information, in respect of national legislation and principles of practice in advertising and communication” (Tuica, 2011) [34].

In support of consumer protection there is the National Authority for Consumer Protection (NACP), as well as a number of non-governmental organizations such as the Consumer Protection Association (CPA) or the National Association for Consumer Protection and Promotion of the Programs and Strategies (NACPPPS) from Romania.

Although there are resolute regulations in the area of advertising, there are still situations where consumers are handled, or cheat and on such examples the following research will be focusing.

4. Research methodology

The exploratory research presented in this paper examines, based on secondary data analysis, some of the Romanian advertising campaigns integrated in the online environment too, that have been the subject of discussion and complaints regarding the violation of the misleading and comparative advertising law. The main goal of this research is to verify that these irregularities have been rectified, and to analyze the impact that they have on consumer safety. The examples are from recognized companies, such as: Carpathian Springs, Danone, Roşia Montană Gold Corporation and Unilever.

4.1. The mineral sparkling water Aqua Carpatica

In 2010 the company Carpathian Springs has launched a new brand of mineral water, called Aqua Carpatica, this being promoted on the market as “the purest mineral water in the world”. The message of the Aqua Carpatica ad mentions that it is “the only nitrate-free mineral water in the world”, comparing it with the famous mineral waters from the Alps, Norway or even with the most sold waters in Romania, about it has been specified that would take a nitrate content between 1,21 and 4,42 mg/l.

Shortly afterwards, the representatives of the National Society of Mineral Waters (SNAM) claimed that this advertising message mislead consumers, because “nitrate concentration of a mineral water is not the most relevant criterion in determining the purity of waters” (eComunicate.ro, 2010) [18], but it is only one of the 10 quality parameters established by the Government decision No. 1020 of 1 September 2005 relating to the exploitation and marketing of natural mineral waters.

According to SNAM, “there is no nitrate-free waters” (Mediafax, 2012) [26], but only with very little amounts, and “in Romania are at least six sources of mineral water with a nitrate content less than or equal with Aqua Carpatica” (Mediafax, 2012) [26]. The Patronage of the Local Mineral Waters (APEMIN) joined the SNAM claiming allegations referred to in the advertising campaign of this product are untrue.

Thus, on December 7, 2010, following complaints of SNAM and APEMIN, NAC has analyzed the advertising campaign, but decided “to permit further distribution of the Aqua Carpatica ad, demanding that this advertisement should contain the word carbonated” (Mediafax, 2012) [26].
In 2012, the RAC has forwarded to NAC a complaint concerning the violation of the Code of Practice in Advertising. Following the review of the advertising message, NAC found that “ads have been running in violation of the provisions of article 102 (1) and of article 104 of the Decision No. 220/2011 regarding the Code governing the audiovisual content with reference to the provisions of article 3 (b) and 5 (a) of Law No. 158/2008 relating to misleading advertising and comparative advertising” (CNA, 2012) [11]. NAC’s conclusion was that the ads that promote the mineral water Aqua Carpatica have a misleading character and “contain statements liable to mislead the public, as a consumer, with regard to the truthfulness of the information presented and the mineral water characteristics sold on the market”, the nitrates not representing “a factor of risk to public health unless their value exceeds the maximum permissible limits” (CNA, 2012) [11], that within the EU and in Romania is 50 mg/l.

The obligation imposed to Carpathian Springs was to mention the source confirming the information transmitted in ads, otherwise the statement “the only carbonated mineral water in the world without nitrates” being removed from the advertising campaign.

Currently, on the official website, the information from the presentation of the product continue to claim that “Aqua Carpatica is a sparkling pure water containing 0 nitrates” (Aqua Carpatica, 2014) [7] without mentioning however the source of information. At the same time, Aqua Carpatica’s blog, launched the initiative called “The Water Law” which supports “the introduction of nitrate levels on the labels of all mineral waters from the Romanian market and the change of the legal framework concerning the maximum permissible concentration of nitrates in drinking water” (Aqua Carpatica Blog, 2012) [6]. So far, the online support campaign has gathered 69,427 signatures of the 100,000 needed “to be able to make these beneficial changes for all the consumers of natural mineral waters in Romania” (Aqua Carpatica Blog, 2012) [6].

4.2. Activia and Actimel yogurts

Activia and Actimel yogurts, within the portfolio of Danone, are two products whose promotion on the market was built on the idea that they bring benefits to the consumers’ health through the two probiotic bacteria used exclusively by the French company.

Activia yogurt, launched in Romania in 2001, highlighted in its advertising campaigns the Bifidus ActiRegularis bacteria benefits for the intestinal flora, while Actimel yogurt, launched on the Romanian market in 2005, focused on the benefits offered by the ferment L casei Defensis for the organism immunity.

According to the studies published by independent researchers, “it actually cannot be demonstrated that the presence of the probiotics - like L casei Imunitas or Bifidus ActiRegularis - in food would have on consumers the effects listed in advertisements. In other words, despite the advertising messages which claim that it has been clinically proven, it is not clear that the yogurt strengthens the immune system or that the probiotics help the intestinal transit time” (România Liberă, 2009) [29].

Thus, in 2010, Danone gave up recognizing the beneficial effects of the two products Activia and Actimel, by withdrawing from the European Food Safety Authority (EFSA) the official request for the recognition of the effects of those two probiotics. The decision was motivated by “the lack of clarity and visibility with regard to the application of the European rules” in the industry (HotNews, 2010) [22].

Although at an European level the misleading ads of those two products were immediately withdrawn, in our country the company’ representatives have decided that “there is no need for a change in the marketing communication and that, at least for the moment, the ads of the two products will not be withdrawn from the Romanian market” (România Liberă, 2010) [30].

As regards the Activia yougurt, the ad form 2008 stated that “only Activia contains the Bifidus ActiRegularis ferment. It passes in sufficient amount through the acid barrier of the stomach, helping to regulate the slow intestinal transit”. In 2010, the ad stated that if it is “consumed daily, Activia helps to improve the digestive comfort, reducing the sensation of bloating”, being accompanied by the words “scientifically proven". Currently, the advertising campaign called “2014, the year of change for the better” states that “Activia with Bifidus ActiRegularis, which arrives in the intestinal flora, contains calcium, which helps the digestive health”.

For the Actimel yogurt, in 2008, the advertising message delivered was that “Actimel, with L casei Imunitas, helps strengthen the natural defense system of the body”, being accompanied by the words “clinically proven”. In the current campaign, the message is that “beside L casei Defensis, Actimel also contains the B6 vitamin, which helps the immunitary system to operate normally”.

Currently, on the official sites of these two products are presented information likely to further deceive the consumers, since according to them, the two probiotics have certain effects on the health.

4.3. Roșia Montană mining project

A very controversial project is represented by the situation of Roșia Montană. For its acceptance, not only from the social point of view, but also for the economic implications it has, and especially due to the controversies that arise around this topic, Roșia Montană Gold Corporation (RMCG) developed extensive advertising campaigns.

Especially in the online environment, the subject incites extensive debates which have as a starting point the truthfulness of the information promoted. Because of the extent that this topic has, almost defining the dimensions of a social phenomenon, the analyses that we will undergo will refer exclusively to the ads for which the company was sanctioned and for which were filed complaints to the National Audiovisual Council.
Over time, Roşia Montană Gold Corporation has been defendant several times for the deceptive character of the information which has been transmitted through its advertising campaigns. In 2009, complaints have been filed to the NAC by Ştefania Simion, a representative of the Association of Alburnus Maior from Roşia Montană, which represents the interests of the inhabitants from the area and which opposes to the mining project. Through the voice of Ştefania, the Association warns the deceptive character of the information conveyed through the advertising campaigns conducted by RMGC, during the same year.

Some of the articles of law that were violated in the advertisements are those relating to: corporate and product identity (article 5, letter c of Law 158/2008 and article 6, paragraph 1, letter a of Law 363/2007) - the RMGC company did not reveal its identity and presents the advantages of a new project, although in reality they refer to the same project; another deceptive practice refers to the characteristics of the product and the results that may be obtained from its use (article 6, paragraph 1, letter b of Law 363/2007) - the financial benefits of the project, the revenue promised in the TV ads, are not known yet and the amount is not presented with an approximate character. These are just a few of the major signals pulled from Alburnus Maior Association regarding the deceptive character of the information contained in the TV ads. As a result of complaints submitted, NAC has taken the decision to discontinue the dissemination of these ads and to replay them only after RMGC introduces some explanations about the real benefits of this project for Romania.

In October 2013, NAC has examined a series of 11 TV ads made by RMGC that have been aired in September 2013 and that promoted the mining project in Roşia Montană. The ads runned on the TV channels and in the online environment as well. The NAC decision was to stop these ads because they violated several articles of the law which relate both to the deceptive nature of the information exchanged, as well as to the consumer protection. Therefore, was cited article 29 of the law, according to which “audiovisual commercial communications shall comply with the following conditions: not to stimulate harmful health behaviours or the safety of the population” (Ion and Cerban, 2013) [23].

The NAC members felt that the exploitation with cyanide which was promoted in the RMGC commercials harms both the environment and the people. The NAC members decided that the commercials violated the article 104 of the Code for regulation the audiovisual content, according to which “it is prohibited that advertising and teleshopping to use deceptive trade practices and aggressive commercial practices” (Code for regulating the audiovisual content, 2011). At the same time, the NAC found that those commercials did not informed properly the public, in breach of the article 93 of the Code for regulating the audiovisual content, according to which “audiovisual commercial communication should respect, whatever its form and duration, the principles for the protection of the minors, the correct information of the public, the human dignity, and ensure a fair competition” (CNA Decision 537, 2013) [13].

In accordance with the Law 363/2007 “the consumer does not need to be misled or exposed to aggressive marketing techniques, and any claims must be clear, accurate and justified, allowing consumers to make informed and justifiably choices” (CNA Decision 537, 2013) [13].

From the NAC members’ point of view, the advertising made by RMGC violates article 9 of Law 363/2007, since these exploit the unfortunate situations of the local people in such a way as to influence the consumer's decision about the product. Therefore, for the people with precarious financial situation from the region will be much easier to accept an undesirable situation even if their long-term health is affected, in exchange for certain benefits in the short term.

4.4. Rama margarine

Another topic that sparked numerous controversies both online and on television channels is Rama campaign “Champions at Breakfast” with Nadia Comaneci. The manufacturer of Rama margarine, the company Unilever, was banned by the NAC to broadcast on TV channels two commercials, because the message promotes and encourages the importance that we attach to a breakfast and a healthy diet by positioning the Rama margarine as a healthy product and encouraging children, by the power of example, to consume it.

According to the NAC members, by decision no. 363 from 02.07.2013, the commercials violate the rules of article 120 paragraph 2 and paragraph 3 of decision no. 220/2011 from the Code governing the audiovisual content. Article 120 specifies in paragraph 2 that “there will not be assigned food properties that they do not possess” (CNA Decision No. 363, 2013) [12], and paragraph 3 specifies evidently, that for food advertising addressed to minors is prohibited the use celebrities.

Regarding the content of the message, it is misleading because it tried transmitting the message that, by consuming Rama margarine, children will become champions. Thus, by assigning a property of a food that it does not possess, it has also violated article 6, letter b of the Law 363/2007, as well as article 5, letter a of Law 158/2008, which refer to the characteristics of promoted products or services. “Also, in terms of consumption of margarine, the commercial doesn't contain any information concerning the quantity of this product that can be consumed (in particular for breakfast) for its beneficial effects for health. [...] the promotion of this product was supposed to inform properly the public in terms of the maximum quantity that can be consumed, e.g. 20 grams daily” (CNA Decision No. 363, 2013) [12]. Although the commercial is still online this happens only because of the users’ efforts and not because of the official channels of the company.
5. Results and discussion

Although from a legal perspective, the classification of the commercial ads as misleading or comparative is clearly stipulated, from the marketing perspective this is still a controversial subject, having multiple and profound implications on the Romanian consumer behavior. From the examples analysed previously we noticed that there is a discrepancy of opinions between the companies accused of practicing unfair actions and the organisations that defend the consumer rights.

According to the research, regarding the comparative advertising, we found that on the local market weren’t registered complaints concerning its improperly usage or outside the law. However, with regard to misleading advertising, the examples are numerous, thus highlighting the fact that the marketing objectives of some Romanian companies are short or medium-term oriented, aiming to obtain high profits by manipulating consumers, without considering the long-term negative effects, like reducing the brand equity, the consumers’ trust and loyalty.

In conclusion, the incomplete or incorrect information about the characteristics of products or services may harm the consumer behavior. A proposal for the indirect consumers’ protection could be organizing an extensive campaign at national level for the information and education of the consumers, so that the unfair commercial practices could be easily identified by them. Knowing the own rights and obligations of the consumers, stipulated in the legislation, is an important premise for the development of a responsible behavior that can facilitate their elections and the subsequent relations with the economic operators.

6. Conclusions

In terms of the research contributions, they reside in its practical nature, unlike other Romanian scientific papers in the field. In addition, the importance of this paper is underlined by the analysys of the two forms of advertising implemented both in traditional media and the online medium, with an emphasis on the latter, which is a topic insufficiently addressed in the literature.

The main limitations of the present research result from its exploratory character that does not allow surprising in detail all the aspects of the studied phenomenon. Another drawback of the research are the sources used and analyzed, that are secondary, which is why all the disadvantages of this type of information sources (freshness, correctness, relevance) are valid in this case too. Although the number of examples of advertising campaigns investigated is not so large, the practices highlighted are indicative and their effects affect some important market segments, the initial assumption being confirmed.

Regarding future research, we recommend supplementing those results obtained using a quantitative research that should aim to evaluate the same two types of advertising from the Romanian consumer perspective.

7. References


