

## Advertising Act

Passed 11 June 1997

(RT<sup>1</sup> I 1997, 52, 835),

entered into force 1 January 1998,

amended by the following Acts:

19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387;

19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375;

05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336;

09.05.2001 entered into force 01.01.2002 - RT I 2001, 50, 284;

14.02.2001 entered into force 01.05.2001 - RT I 2001, 23, 127;

25.02.1999 entered into force 01.01.2000 - RT I 1999, 30, 415;

18.02.99 entered into force 27.03.99 - RT I 1999, 27, 388.

## Chapter 1

### General Provisions

#### § 1. Purpose of Act

(1) The Advertising Act provides the definition of advertising, establishes general requirements for advertising, restrictions on advertising and their extent, and special conditions for advertising, regulates supervision over advertising and establishes liability for violation of this Act.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

#### § 2. Definition of advertising

(1) For the purposes of this Act, information which is made public for the purpose of increasing the sale of products or services, promoting an event or idea, or achieving other desired results in other areas and which an advertiser disseminates for a fee or other consideration is deemed to be advertising.

(2) For the purposes of this Act a person who presents, exhibits or transmits advertising to the public, or produces, distributes or commissions advertising is deemed to be an advertiser.

### § 3. Basic requirements for advertising

(1) The content, design and presentation of advertising shall be such that, given ordinary attention by the public, it is recognised as advertising.

(2) Advertising shall contain clearly distinguishable information concerning the advertiser. Such information shall be contained in an advertisement as text or conveyed by a trade mark registered in Estonia.

## Chapter 2

### General Requirements for Advertising

#### § 4. Misleading advertising

(1) Misleading advertising is advertising which in any way, including its presentation, deceives or is likely to deceive the public, or which, for those reasons, injures or may injure a competitor. Misleading advertising is prohibited.

(2) In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning:

1) the composition, environmental safety and risk of damage to health related to use of the product, the method and date of manufacture, fitness for purpose, manner of use, place of production, country of origin or other characteristics;

2) the value and actual price of the product or service;

3) the terms of payment for products or services, such as hire purchase, leasing, instalment sales and credit sale;

4) delivery, exchange, return, repair and maintenance of the products;

5) terms of guarantee of products or services;

6) the manufacturer of the product or service provider, the manufacturer's or service provider's area of activity and qualifications, and the intellectual property rights related to the product or service;

7) official recognition or approval of the product or service, receipt of awards, distinctions or diplomas;

8) extent of endorsement for public or charitable causes using the name of the product or service.

(3) It is prohibited to use the results of scientific or other research, quotations from scientific or technical publications and statistical or scientific data in advertising in a manner that misleads the public concerning the subject of the advertising. Advertising shall not suggest that claims presented have a scientific basis they do not possess.

(4) (Repealed - 14.02.2001 entered into force 01.05.2001 - RT I 2001, 23, 127)

#### § 4<sup>1</sup>. Comparative advertising

(1) Comparative advertising means advertising which directly or indirectly identifies a competitor operating in the same market or goods or services offered by a competitor which meet the same needs or are intended for the same purpose as the advertised goods or services.

(2) Comparative advertising shall compare one or several relevant, material and verifiable features of the compared goods or services, which may include price.

(3) Comparative advertising shall not, as far as the comparison is concerned:

1) create confusion or is likely to create confusion between the compared competitors or the competitors' trade marks, business names, goods or services or material features or conditions of sale of the goods and services;

2) discredit or denigrate the trade marks, business names, goods or services of competitors or the material features or conditions of sale of the goods or services;

3) take unfair advantage of the reputation of the trade marks, business names or other distinguishing marks of competitors or of the designation of origin of the compared goods;

4) compare goods or services marked with different geographical indications within the meaning of the Geographical Indications Protection Act (RT I 1999, 102, 907; 2000, 40, 252; 2001, 27, 151; 56, 332; 335; 2002, 53, 336; 63, 387);

5) present goods or services as replicas or imitations of goods or services bearing a protected trade mark.

(4) Any comparison in an advertising referring to a special offer of goods or services shall contain clear and unequivocal information on the final date of such offer or that the special offer is subject to the availability of the offered goods or services, and other special conditions of the offer. If, upon publication of the advertising, the special offer has not yet begun, the advertising shall contain the date on which such offer starts.

(14.02.2001 entered into force 01.05.2001 - RT I 2001, 23, 127)

#### § 5. Offensive advertising

(1) An advertisement is offensive if it is contrary to good morals and customs, calls on people to act unlawfully or to violate prevailing standards of decency, or if it contains such activities. Offensive advertising is prohibited.

(2) An advertisement is considered offensive in particular if the advertisement:

1) presents, incites or endorses discrimination on the grounds of nationality, race, colour, sex, age, language, origin, religion, political or other opinion, and financial or social status or other circumstances;

2) calls on people to behave violently or incites violent behaviour in order to achieve an objective or in choosing the manner in which to achieve an objective;

3) degrades lawful behaviour or directly or indirectly justifies violation of the law as a means of achieving an objective;

4) plays on superstition, fear or sympathy;

5) contains any direct statement or visual presentation regarding a sexual act, inappropriate nudity or socially unacceptable sexual behaviour; or

6) presents false information concerning other persons, their products or services, or other facts.

#### § 6. Denigratory advertising

(1) Advertising which directly or by implication degrades or in some other manner denigrates a person, activity, area of activity, product, service, business activity or anything else published in advertising is deemed to be denigratory.

(2) Denigratory advertising is prohibited.

#### § 7. Protection of private life and property

(1) A producer of advertising shall not use visual images which portray or refer by name to any natural person without the prior permission of the person.

(2) Unless prior permission from the owner has been obtained, property shall not be used in advertising and shall not be referred to in a way likely to convey the impression of a personal endorsement.

(3) Producers of advertising shall observe the provisions of the Copyright Act (RT 1992, 49, 615; RT I 2000, 16, 109; 78, 497; 2001, 50, 289; 56, 335; 2002, 53, 336; 63, 387) in the production of advertising.

(4) The use of design of banknotes and coins issued by the Bank of Estonia in advertising is permitted only with the prior consent of the Bank of Estonia.

(18.02.99 entered into force 27.03.99 - RT I 1999, 27, 388)

## § 8. Surreptitious advertising

(1) Advertising which, regardless of the manner or means of publication and, given ordinary attention by the public, is not readily recognised as advertising or is not readily separated from other information published simultaneously in the same advertising medium is deemed to be surreptitious advertising.

(2) Surreptitious advertising is prohibited.

## § 9. Advertising directed at children

(1) Advertising shall not exploit the natural credulity or lack of experience of children.

(2) The following additional requirements shall be observed in advertising directed principally at children:

1) advertising shall not suggest that possession of a product, use of a service or achievement of some other objective intended by the advertisement will give the child an advantage over other children of the same age or that the lack thereof would have the opposite effect.

2) advertising shall not incite children to behave or act in a manner which has or may have the effect of bringing children into unsafe conditions;

3) advertising shall not include any direct appeal to children to demand the product or service being advertised from other persons;

4) advertising shall not create feelings of inferiority in children or incite them to act in an aggressive manner.

(3) In the production of advertising directed at children and in the use of children in advertising, their unique physical and mental state resulting from their age shall be considered.

## Chapter 3

### Advertising Restrictions and Special Conditions

## § 10. Advertising of tobacco products

(1) Advertising of tobacco products is prohibited.

(2) For the purposes of this Act, tobacco products as defined in the Tobacco Excise Act (RT I 1994, 54, 901; 2001, 51, 296; 87, 528; 88, 531) are tobacco products.

## § 11. Advertising of alcoholic beverages

(1) For the purposes of this Act, spirits or alcoholic beverages as defined in the Alcohol Excise Duty Act (RT I 1995, 87, 1539; 1996, 45, 852; 87, 1544; 1997, 35, 540; 1998, 103, 1700; 1999, 24, 359) are deemed to be alcoholic beverages.

(2) For the purposes of this Act, alcoholic beverages with an alcohol content higher than 22 per cent by volume are strong alcoholic beverages. For the purposes of this Act, alcoholic beverages containing between 3 to 22 per cent alcohol by volume are low-alcohol beverages.

(3) Advertising of alcoholic beverages which promotes initiation of the use of alcoholic beverages or which contains a direct appeal to purchase or consume such beverages or is directed primarily at persons under the age of twenty-one (hereinafter – children or young people) is prohibited.

(4) Restrictions on the advertising of alcoholic beverages do not extend to:

1) publication of the business name of a sole proprietor, commercial undertaking, or a branch of a foreign commercial undertaking, if the notice does not contain any other information;

2) signs used to designate the location of sole proprietors, commercial undertakings or branches of foreign commercial undertakings engaged in the production, storage or distribution of alcoholic beverages.

## § 12. Advertising of strong alcoholic beverages

(1) Advertising of strong alcoholic beverages is prohibited:

1) on television or radio between the hours of 7.00 and 21.00;

2) on video cassettes, video games, compact discs or by any other technical media;

3) on the front or back cover of newspapers or magazines;

4) in printed publications that are directed principally at children or young people or on printed matter containing information published principally for children or young people;

5) in cinemas, museums, theatres and concert halls, with the exception of places within such sites where alcohol is sold or places designated for the consumption of alcoholic beverages;

6) in or on a building housing a nursery school, school, other educational institution, children's or youth centre or in close proximity thereto;

7) in a stadium, permanent sports arena or gymnasium, or in or on any other space or structure intended for sports;

8) as outdoor advertising, except on buildings in which strong alcoholic beverages are sold;

9) in, on, or on the territory of a hospital or other health care facility;

10) inside or on the outside of public transport vehicles and taxis.

(2) Advertising of strong alcoholic beverages shall not contain:

1) symbols of the state or local governments;

2) references to or visual images of characters from film, television, pop music, entertainment, sports or other public figures, or characters from cartoon animation or three-dimensional animation;

3) information, events or activities which may suggest that the consumption of strong alcoholic beverages is important for achieving positive results in certain fields.

(3) Advertising of strong alcoholic beverages using the following sales promotion methods is prohibited:

1) public displays in areas where strong alcoholic beverages are not sold;

2) the sale or distribution free of charge to children or young people of a product or printed matter related to strong alcoholic beverages.

#### § 13. Advertising of low-alcohol beverages

(1) The advertising of low-alcohol beverages is prohibited:

1) on television or radio between the hours of 7.00 and 20.00;

2) in or on a building housing a nursery school, school, other educational institution, children's or youth centre or in close proximity thereto;

3) in a stadium, permanent sports arena or gymnasium, or in or on any other building or structure intended for sports;

4) in, on, or on the territory of a hospital or other health care facility;

5) in printed publications which are directed principally at children or young people, or on printed matter containing information published principally for children or young people;

6) in cinemas, museums, theatres and concert halls, with the exception of places within such sites where alcohol is sold;

(2) Advertising of low-alcohol beverages shall not contain:

1) references to or visual images of characters from film, television, pop music, entertainment, sports or other public figures, or characters from cartoon animation or three-dimensional animation;

2) information, events or activities which may suggest that the consumption of alcoholic beverages is important for achieving positive results in certain fields.

(3) The sale or distribution free of charge to children or young people of a product or printed matter related to low-alcohol beverages as a method of advertising low-alcohol beverages is prohibited.

(4) Local governments have the right to determine the areas which are deemed to be in proximity to the structures specified in clauses (1) 2)–4) of this section.

#### § 14. Advertising of medicinal products

(1) For the purposes of this Act, medicinal products, proprietary medicinal products and semi-medicinal products as defined in the Medicinal Products Act (RT I 1996, 3, 56; 49, 954; 1997, 93, 1564; 1998, 36/37, 554; 1999, 58, 608; 2001, 53, 308; 2002, 13, 79; 18, 97; 53, 336; 62, 377; 63, 387) are deemed to be medicinal products.

(2) Advertising directed at persons who are qualified to prescribe medicinal products shall not be considered advertising of medicinal products as defined in this Act, for which requirements shall be prescribed by the Medicinal Products Act.

(3) Advertising of medicinal products which are not registered in Estonia or which are distributed at a discount to the public or prescription medicinal products is prohibited.

(4) Only manufacturers of medicinal products may commission advertising of medicinal products.

(5) Advertising of medicinal products shall not mention the treatment of tuberculosis, sexually-transmitted diseases or any other serious infectious diseases, cancer and other tumoral diseases, chronic insomnia, diabetes and other metabolic illnesses.

(6) Advertising of a medicinal product shall:

1) be set out in such a way that it is clear that the message is an advertisement and that the product is a medicinal product;

2) be up-to-date, understandable, unambiguous, ensure the distinguishability of the medicinal product from other medicinal products and shall contain sufficient information for the correct and safe use of the medicinal product;

3) be in accordance with the summary of product characteristics approved by the Agency of Medicines at the time of registration;

4) include the name of the medicinal product, as well as the common names of the active ingredients which the medicinal product contains;

5) include an express, legible invitation to read carefully the instructions on the outer packaging or on the package leaflet and to consult a physician.

(7) It is prohibited to use material in advertising of medicinal products which:

- 1) contains symbols of the state or local governments;
  - 2) contains references to characters from film, television, entertainment, sports or other public figures or renowned physicians or scientists, or characters from cartoon animation or three-dimensional animation;
  - 3) contains complicated terminology from specialised fields or unfounded opinions or assessments of the manufacturer concerning the properties or effectiveness of the medicinal products;
  - 4) gives the impression that a medical consultation or surgical operation is unnecessary, by offering a diagnosis or by other comparable means;
  - 5) suggests that the effects of taking the medicine are guaranteed, are unaccompanied by side effects or are better than, or equivalent to, those of another treatment or medicinal product;
  - 6) suggests that the health of the subject can be enhanced only by taking the medicine;
  - 7) suggests that the health of the subject could be affected by not taking the medicine;
  - 8) is directed exclusively or principally at children or young people;
  - 9) suggests that the medicinal product is a foodstuff, cosmetic or other consumer product;
  - 10) suggests that the efficacy or safety of the medicinal product is due to the fact that it is natural;
  - 11) could, by description or detailed representation of a case history, lead to an erroneous self-diagnosis;
  - 12) refers, in improper, misleading or alarming terms, to claims of recovery;
  - 13) uses, in improper or misleading terms, pictorial representations of changes in the human body caused by disease or injury, or of the action of a medicinal product on the human body or parts thereof;
  - 14) mentions that the medicinal product has been granted a marketing authorisation.
- (8) It is prohibited to give samples of medicinal products or to sell or distribute items or printed matter as a method of sales promotion to persons who are not qualified to prescribe medicinal products.
- (9) The advertising of medicinal products is prohibited:
- 1) on video cassettes, video games, compact discs or by any other technical means;
  - 2) on the front or back cover of newspapers or magazines;

3) in printed publications which are directed principally at children or young people, or on printed matter containing information published principally for children or young people;

4) as outdoor advertising and inside or on the outside of public transport vehicles and taxis.

#### § 14<sup>1</sup>. Advertising of health services

(1) Only health care providers who act in accordance with the Health Services Organisation Act may advertise themselves as health care providers.

(2) The advertising of health services may include only the name, working time, place of business and speciality of the health care provider, the names, specialties and academic degrees of health care professionals, and the health services provided.

(3) The advertising of health services shall include the number of the activity licence of the health care provider.

(09.05.2001 entered into force 01.01.2002 - RT I 2001, 50, 284)

#### § 15. Advertising of financial services

(1) For the purposes of this Act, services set out in clauses 5 (1) 1)–12) of the Credit Institutions Act (RT I 1995, 4, 36) are deemed to be financial services.

(2) Advertising of financial services shall be understandable, unambiguous and shall ensure clear and easy understanding of all conditions of the services being offered, in particular the actual interest rate, all other service-related costs and the terms of payment.

(3) Advertising of financial services shall not contain direct or indirect comparisons to competing services which contain information which is not directly and easily comparable.

(4) Any advertisement, or any offer accessible to the public, in which a person offers consumer credit or offers to arrange consumer credit contracts and in which a rate of interest or any figures relating to the cost of the credit are indicated shall also include a statement of the annual percentage rate of charge, by means of a representative example if necessary.

(05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)

#### § 16. Advertising of poisonous, flammable and otherwise dangerous products

(1) Advertising of poisonous, flammable and otherwise dangerous products shall contain a direct reference to the potential danger of such products, conditions under which such danger may arise and necessary safety measures in the use of such products.

(2) It is prohibited to advertise that a product is safe if use of the product is restricted by legislation because of danger related thereto.

#### § 17. Advertising of narcotic drugs and psychotropic substances

Advertising of narcotic drugs and psychotropic substances is prohibited.

#### § 18. Advertising of weapons and ammunition

(1) Advertising of weapons or ammunition is prohibited, except in a designated sales area, exhibition, exposition or speciality publication.

(2) Advertising of weapons and ammunition shall be understandable, unambiguous and ensure the distinguishability of weapons and ammunition from other products of the same type. Advertising of weapons and ammunition shall not contain complicated terminology from specialised fields or opinions or assessments of the manufacturer concerning the properties of the product.

(3) Advertising of weapons and ammunition shall not contain:

- 1) a direct appeal to purchase or use weapons or ammunition;
- 2) elements of violence or glorification of weapons or ammunition.

#### § 19. Advertising of gambling

(1) Advertising of gambling and casinos is prohibited except in locations where gambling is held.

(2) Advertising of gambling shall be understandable and unambiguous. Advertising of gambling shall not contain a direct appeal to participate in gambling.

#### § 20. Advertising of prostitution

Advertising of prostitution is prohibited.

#### § 20<sup>1</sup>. Advertising of food

(1) Upon the advertising of food, it is prohibited to:

- 1) attribute such characteristics or properties to the food which the food does not possess;
- 2) attribute special characteristics to the food when all food in the food group possesses similar characteristics;
- 3) refer to the properties of the food which prevent, treat or cure diseases.

(2) The advertising of breast milk substitutes, including infant formulae and follow-on formulae, is prohibited.

(25.02.1999 entered into force 01.01.2000 - RT I 1999, 30, 415)

## Chapter 4

### Supervision over Advertising

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 21. Supervision over advertising

(1) Supervision over advertising shall be exercised by the agencies designated by the Government of the Republic on the bases, pursuant to the methods, and to the extent established by this Act and other legislation.

(2) Within their administrative territories, local governments shall supervise:

- 1) advertising at exhibitions, expositions or other public events;
- 2) outdoor advertising;
- 3) advertising inside or on the outside of public transport vehicles and taxis;
- 4) advertising in stores or advertising events.

#### § 22. Obligation to retain reproducible copies of advertisements

Persons who present, exhibit or transmit advertising to the public are required to retain reproducible copies of the advertisements for at least thirty days from the last publication of the advertisements and to submit copies of the advertisements for review to the official exercising supervision over advertising at his or her first request.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 23. Mandatory precept in case of violation of this Act

(1) The director of an agency exercising supervision over advertising or an official authorised by him or her has the right upon ascertaining a violation of this Act to issue a mandatory precept to an advertiser whose advertisement is in violation of this Act.

(2) A mandatory precept issued to an advertiser whose advertisement is in violation of this Act shall set out the following:

- 1) the time and place the precept is prepared, the name and address of the agency in whose name the warning is prepared;
- 2) the official title, given name and surname of the person who prepares the precept;
- 3) the name and address of the advertiser;
- 4) the place, time and description of the violation of this Act;

- 5) the provisions which provide for liability for a violation of this Act;
- 6) the requirement to cease publication of the advertisement which is in violation of this Act and a sufficient deadline for filing an objection and complying with the requirement.

## Chapter 5

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

### Liability

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 23<sup>1</sup>. Persons liable for violation of law

The following persons who fail to comply with the requirements or restrictions established for advertising pursuant to law shall be held liable as advertisers pursuant to the procedure provided for in this Act:

- 1) persons who commission advertising if the advertising commissioned by such persons violates the requirements for or restrictions on advertising established by this Act, except in the cases provided for in clauses 2) and 4) of this section;
- 2) persons who distribute or produce advertising if the distributors' or producers' activities violate the requirements for restrictions on advertising established by this Act;
- 3) persons who present, exhibit or transmit advertising to the public if such persons' activities violate the restrictions on publication of advertising established by this Act;
- 4) publishers of advertising specified in clauses 1)–3) of this section solidarily if their activities violate the requirements for or restrictions on advertising established by this Act and it is not possible to ascertain their separate liability.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 23<sup>2</sup>. Violation of general requirements for advertising

(1) Misleading, offensive, denigratory or surreptitious advertising, advertising which violates the inviolability of private life or ownership, and violation of the requirements for comparative advertising or advertising directed at children is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 23<sup>3</sup>. Violation of restrictions on advertising and special conditions for advertising

(1) Publication of advertisements for products or services in violation of the established restrictions and special conditions, and prohibited advertising is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 40 000 kroons.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 23<sup>4</sup>. Proceedings

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; 2002, 44, 284; 56, 350) and the Code of Misdemeanour Procedure (RT I 2002, 50, 313) apply to the misdemeanours provided for in §§ 23<sup>2</sup> and 23<sup>3</sup> of this Act.

(2) The following extra-judicial bodies conduct proceedings in matters of misdemeanours provided for in §§ 23<sup>2</sup> and 23<sup>3</sup> of this Act:

- 1) the Consumer Protection Board;
- 2) a rural municipality or city government;
- 3) the Agency of Medicines (with regard to the advertising of medicinal products).

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 24. (Repealed – 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

§ 25. (Repealed – 19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 26. Accrual of fines

If a rural municipality or city government is the extra-judicial body which has imposed a cautionary fine or a fine, the cautionary fine or fine imposed for misdemeanours provided for in §§ 23<sup>2</sup> and 23<sup>3</sup> of this Act shall be transferred to the budget of the local government which made the decision.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

#### § 27. Implementing provision

This Act enters into force on 1 January 1998.

<sup>1</sup> RT = *Riigi Teataja* = *State Gazette*