



## Spain – General Advertising Law 34/1988



**Full title:** Law 34/1988 of 11th November, General Advertising (published in BOE No. 274 of 15 November 1988, entered into force: 05/12/1988) (*Ley 34/1988, de 11 de noviembre, General de Publicidad*).

This Law partly transposed Directive 84/450/EEC (Art 4) concerning misleading advertising (subsequently repealed and codified by Directive 2006/114/EC – which was transposed by Law 29/2009 as referenced below).

**Relevant Amendments:**

- Law 12/2012, of 26 December, on urgent measures to liberalize trade and certain services. Entry into force: 28/12/2012. (BOE n. 311, of 27/12/2012)  
<http://www.boe.es/buscar/act.php?id=BOE-A-2012-15595>

The 7<sup>th</sup> and final provision/ disposal amends Article 5 Law 34/1988

- Law 29/2009, of 30 December, amending the law relating to unfair competition and advertising to improve the protection of consumers and users. Entry into force: 01/01/2010 (BOE n. 315, of 31/12/2009)  
[http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2009-21162](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2009-21162)

Article 2.1 amended Art 1, Arts 3-6 Law 34/1988.

- Law 3/2014 of 27th March enacting the revised text of the General Law for Consumer and User Protection and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16th November. Entry into force: 29/03/2014 (BOE, n. 76 of 28/03/2014)  
[http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2014-3329](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-3329)

Third and final provision/ disposal inserts additional paragraph to Art. 6(1) Law 34/1988

**Title of relevant section:**

Title I: General Provisions  
Title II: Unlawful Advertising and Preventive Actions

### TITLE I: GENERAL PROVISIONS

**Article 1** Object

Advertising shall be governed by this Act, the Unfair Competition Law (Law 3/1991) and the special rules governing certain advertising activities.

**Article 2** For the purposes of this Act, the following definitions apply:

- Advertising: Any type of communication carried out by a natural person or legal entity, public or private, in the exercise of a trade, business, craft or profession, for the purposes of promoting, directly or indirectly, moveable (goods) and immoveable (real estate) property, services, rights, and obligations.
- Recipients: the people to whom the advertising message is addressed or to whom it reaches.

URL of source: <http://www.boe.es/buscar/act.php?id=BOE-A-1988-26156>

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TITLE II: UNLAWFUL ADVERTISING AND PREVENTIVE ACTIONS

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## Article 3

Unlawful Advertising.  
The following is unlawful:

a) Advertising that violates the dignity of the person or violates the values and rights enshrined in the Constitution, particularly those referred to in Articles 14, 18 and 20(4)<sup>1</sup>.

Included in the previous provision are advertisements that portray women in a degrading or discriminatory manner, either by specifically and directly using their bodies or parts thereof as mere objects unrelated to the product being promoted, or their image associated with stereotyped behaviours which violate the basis of our legal system while contributing to generate the sort of violence referred to in Organic Law 1/2004<sup>2</sup> of 28 December 2004 on comprehensive protection measures against gender-based violence.

b) Advertising aimed at minors which encourages them to purchase a good or service by exploiting their inexperience or gullibility or where they appear persuading parents or guardians to make the purchase for them. Children may not be portrayed in dangerous situations without good reason. Consumers must not be misled with regard to the characteristics of products or their safety, nor about the capabilities and aptitude a child needs to use them without harming himself or others.

c) Subliminal advertising.

d) Advertising that contravenes the provisions of the rules governing the advertising of certain products, goods, activities or services.

e) Misleading advertising, unfair advertising and aggressive advertising, which shall be considered acts of unfair competition under the terms laid down in the Unfair Competition Act<sup>3</sup>.

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<sup>1</sup> Spanish Constitution: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=185360](http://www.wipo.int/wipolex/en/text.jsp?file_id=185360) (English version)

**Article 14** (Chap.2: Rights and Freedoms): Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

**Article 18** (Chap. 2; Div. 1: Fundamental Rights and Public Freedoms):

(1) The right to honour, to personal and family privacy and to the own image is guaranteed.

(2) The home is inviolable. No entry or search may be made without the consent of the householder or a legal warrant, except in cases of flagrante delicto.

(3) Secrecy of communications is guaranteed, particularly regarding postal, telegraphic and telephonic communications, except in the event of a court order.

(4) The law shall restrict the use of data processing in order to guarantee the honour and personal and family privacy of citizens and the full exercise of their rights.

**Article 20** (Chap. 2; Div. 1):

(1) The following rights are recognized and protected:

a) the right to freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction;

b) the right to literary, artistic, scientific and technical production and creation;

c) the right to academic freedom;

d) the right to freely communicate or receive truthful information by any means of dissemination whatsoever. The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms.

(2) The exercise of these rights may not be restricted by any form of prior censorship.

(3) The law shall regulate the organization and parliamentary control of the mass communication means under the control of the State or any public agency and shall guarantee access to such means by the significant social and political groups, respecting the pluralism of society and of the various languages of Spain.

(4) These freedoms are limited by respect for the rights recognized in this Part, by the legal provisions implementing it, and especially by the right to honour, to privacy, to the own image and to the protection of youth and childhood.

(5) The seizure of publications, recordings and other means of information may only be carried out by means of a court order.

<sup>2</sup> <http://boe.es/buscar/act.php?id=BOE-A-2004-21760>

<sup>3</sup> <http://boe.es/buscar/act.php?id=BOE-A-1991-628>

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Article 4

## Subliminal Advertising

For the purposes of this Act, subliminal advertising is that which, using techniques that produce stimuli of an intensity just beyond the threshold of sensory perception or other analogous techniques, can have an effect on the target population without consciously being perceived.<sup>4</sup>

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## Article 5

## Advertising on specific goods or services.

1. Advertising of medical materials/ supplies or devices and those others subject to technical-health regulations, as well as advertising of products, goods, activities and services liable to endanger the health or safety of individuals or their property and advertising of games of chance, may be regulated by special rules or be subject to the system of prior administrative authorisation. That system may also apply as required for the protection of constitutionally recognised values and rights.

2. The regulations implementing the provisions of the preceding paragraph and those that, in regulating a product or service, contain rules regarding their advertising, shall specify:

a) The nature and characteristics of the products, goods, activities and services whose advertising is being regulated. These regulations shall establish the requirement that advertising of these products reflect the risks associated with their normal use (if applicable).

b) The manner and conditions of broadcasting the advertising messages.

c) The authorisation requirements and, where appropriate, registration of advertising when subject to prior administrative authorisation.

The procedure for the drafting of these regulations must include a hearing of the sector's representative business organisations, associations of advertising agencies and advertisers and of consumer and user associations through the latter's institutional representative bodies, as the case may be.

3. The granting of authorisations must respect the principles of free competition to avoid prejudice to other competitors.

The rejection of authorisation applications must be justified.

Once the deadline established in the special rules for authorisation applications has passed, authorisation shall be assumed granted by virtue of administrative silence.

4. Narcotic and psychotropic products and medicines intended for human and animal consumption may only be advertised in the cases, forms and conditions laid down in the special regulations applying thereto.

5.<sup>5</sup> The advertising on television of beverages with an alcoholic strength of more than 20% ABV is prohibited.

The advertising of beverages with an alcoholic strength of more than 20% ABV shall be prohibited in those places where its sale and consumption is prohibited.

The form, content and conditions to which advertising of alcoholic beverages must conform shall be limited by regulation in order to protect personal health and safety taking account of the target audience, taking care not to directly or indirectly encourage

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<sup>4</sup> This definition is replicated in Art. 2(33) Audiovisual Law 7/2010

<sup>5</sup> As amended by 7<sup>th</sup> final provision/ disposal of Law 12/2012 of 26th December 2012 [http://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2012-15595](http://www.boe.es/diario_boe/txt.php?id=BOE-A-2012-15595)). Minor amendments to 2<sup>nd</sup> and 4<sup>th</sup> paras of Art 5.

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indiscriminate consumption and with due regard for the areas of education, health and sport.

For the same purposes as the previous paragraph, the Government may, through regulation, extend the prohibitions provided for in this section for beverages with an alcoholic strength of more than 20% ABV to beverages with an alcoholic strength of less than 20% ABV.

6. Breach of the special regulations governing advertising of the products, goods, activities and services referred to in the preceding paragraphs shall be considered an infringement of the provisions of the General Consumer and User Protection Act and the General Health-care Act.

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#### Article 6

##### Action with regard to unlawful advertising

1. The actions which can be taken against unlawful advertising shall be those established generally for actions arising from unfair competition under Chapter IV of the Unfair Competition Act, Law 3/1991 of 10 January 1991.

If the content of the advertising violates the applicable legal requirements of this or any other specific or sectoral regulation/ standard, the action for injunction provided for in this Act may be added provided that annulment and revocability/ voidability, breach of obligations, termination and rescission of agreements, restitution of corresponding quantities is sought/ applied for.<sup>6</sup>

2. Additionally, in the case of unlawful advertising using images of women in a discriminatory or degrading way, the following are authorised to take the actions provided for under Article 32(1), numbers 1 to 4 of the Unfair Competition Act:

- a) The Government Delegation for gender-based violence.
  - b) The Women's Institute or its equivalent at regional level.
  - c) Legally constituted associations whose sole aim is the defence of women's interests and which have no for-profit legal persons associated with them.
  - d) The Public Prosecution Service
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<sup>6</sup> Para inserted by: 3<sup>rd</sup> final disposal of Law 3/2014 of 27th March enacting the revised text of the General Law for Consumer and User Protection and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16th November.

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