

Full title of laws or regulations

DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive');

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32005L0029>

Consumer Code - Legislative Decree No. 206 of 6 September 2005, as amended by LD August 2, 2007, No. 146 implementing Directive 2005/29/EC (and Legislative Decree No. 21 of 21 February 2014 implementing the Consumer Rights Directive 2011/83/EC (Arts 45-67 Consumer Code). AGCM translation here:

<http://www.agcm.it/en/list-consumer-protection/1725-legislative-decree-no-206-of-6-september-2005-consumer-code.html>

Title of relevant section

Articles 6 misleading actions, 7 misleading omissions and 12 of the UCPD (linked below; includes only relevant provisions) applied to environmental claims In Italian Consumer Code: article 21 misleading actions and article 22 misleading omissions

http://www.gregsregs.com/downloads/ENV_UCPD_Provisions_Applied_to_Environmental_Claims.pdf

Clauses and commentary

Application of UCPD/ IT Consumer Code to environmental claims

Refer to EU Comm. Guidance s. 5.1 for full details here:

http://www.gregsregs.com/downloads/ENV_EU_ComGuidance_Section5.1_Env_Claims.pdf

Definitions: The expressions 'environmental claims' and 'green claims' refer to the practice of suggesting or otherwise creating the impression (in a commercial communication, marketing or advertising) that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services. This may be due to its composition, how it has been manufactured or produced, how it can be disposed of and the reduction in energy or pollution expected from its use. When such claims are not true or cannot be verified, this practice is often called 'greenwashing' (5.1 EU Com Guidance)

Main Principles: Articles 6 misleading actions, 7 misleading omissions and 12 of the UCPD (link includes only relevant provisions) applied to environmental claims In Italian Consumer Code: article 21 misleading actions and article 22 misleading omissions)

Summarised in 2 main principles:

- I. Based on the general clauses of the UCPD, particularly Articles 6 and 7, traders must present their green claims in a clear, specific, accurate and unambiguous manner, to ensure that consumers are not misled.
- II. Based on Article 12 of the UCPD, traders must have the evidence to support their claims and be ready to provide it to competent enforcement authorities in an understandable way if the claim is challenged. Note: In the IT Consumer Code Art. 27(5) Administrative and judicial protection: The Authority (AGCM) may require the trader to furnish evidence as to the accuracy of factual claims in advertising if, taking into account the legitimate interest of the advertiser and any other party to the proceedings, such a requirement appears appropriate on the basis of the circumstances of the particular case. If the evidence is not provided or is deemed to be insufficient the factual data shall be deemed to be inaccurate. In any events the burden of proof lies with the trader who must demonstrate, by proving with facts, that he could not reasonably have foreseen the impact of the commercial practice on consumers, within the meaning of section 20 (3)

Application of the Annex; the list of commercial practices which are in all circumstances considered unfair - the 'Black List' in relation to environmental claims (Points relevant to environmental claims 1 – 4, and 10 of UCPD; Art. 23 (1) (a-d) Italian Consumer Code), e.g.

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- “Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation” will always be regarded as an unfair commercial practice (Art. 23(1b) IT Consumer Code / or Point 2, Annex I UCPD).

Example relevant to environmental claims: using any community e.g. EU Eco-Label (Note: a voluntary environmental labelling system established by the European Commission. It enables manufacturers to demonstrate that their product is environmentally friendly. It shows that it has a reduced environmental impact throughout its life cycle, from the extraction of raw material through to production, use and disposal. It does not apply to packaging itself, only contents) or national label e.g. Blue Angel in Germany) without authorisation.

EU Eco label: <http://www.gregsregs.com/downloads/EUCosEUEcoLabel.png>

Blue Angel Germany: http://www.gregsregs.com/downloads/EUCosBlue_Angel.jpg

- Comparisons Product comparisons involving environmental claims must be assessed under the criteria set out by the Directive on Misleading and Comparative Advertising MACAD - Article 4 MACAD / in Italy Art. 4 Legislative Decree 145/2007 (link is to an English translation of key clauses and is shown below) sets out the criteria under which comparative advertising is allowed. Refer back to the main website under 2.2 <http://www.g-regs.com/downloads/ITConsumerCodeN.pdf>
 - These criteria apply to advertisements that compare the environmental impact or benefit of different products. Under these provisions, such a comparison should therefore, among other things (see Art. 4 2006/114/EC / Art. 4 LD 145/2007):
 - Not be misleading, within the meaning of the UCPD
 - Compare goods or services meeting the same needs or intended for the same purpose (usually interpreted to mean that the comparison should refer to the same product category);
 - Objectively compare one or more material, relevant, verifiable and representative features of those goods and services
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