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Misleading advertisement practices

European Parliament resolution of 22 October 2013 on misleading advertisement practices (2013/2122(INI))

The European Parliament,

- having regard to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on protecting businesses against misleading marketing practices and ensuring effective enforcement (COM(2012)0702),
- having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version)¹,
- having regard to 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 (the ‘Unfair Commercial Practices Directive’)²,
- having regard to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on consumer protection cooperation)³,
- having regard to Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers’ interests⁴,
- having regard to its resolution of 9 June 2011 on misleading business directories⁵,
- having regard to its resolution of 13 January 2009 on the transposition, implementation and enforcement of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and Directive 2006/114/EC concerning misleading and comparative advertising⁶,
- having regard to its resolution of 16 December 2008 on misleading directory companies⁷,
- having regard to the study entitled ‘Misleading practices of “directory companies” in the context of current and future internal market legislation aimed at the protection of consumers and SMEs’, commissioned by its Committee on the Internal Market and Consumer Protection⁸,
- having regard to the draft opinion of the European Economic and Social Committee of 19 April 2013 on the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions

¹ OJ L 376, 27.12.2006, p. 21.

² OJ L 149, 11.6.2005, p. 22.

³ OJ L 364, 9.12.2004, p. 1.

⁴ OJ L 166, 11.6.1998, p. 51.

⁵ OJ C 380 E, 11.12.2012, p. 128.

⁶ OJ C 46 E, 24.2.2010, p. 26.

⁷ OJ C 45 E, 23.2.2010, p. 17.

⁸ IP/A/IMCO/ST/2008-06.

entitled ‘Protecting businesses against misleading marketing practices and ensuring effective enforcement - Review of Directive 2006/114/EC concerning misleading and comparative advertising’ (COM(2012)0702)¹,

- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A7-0311/2013),
- A. whereas misleading marketing practices can take many forms, with the most prominent being business directories, payment forms, internet domain name and trademark protection scams and misleading ‘business opportunity’, ‘work from home’ or ‘get-rich- quick’ schemes;
- B. whereas the scope of Directive 2006/114/EC is currently related to misleading and comparative advertising and its consequences for fair competition within the internal market;
- C. whereas there is a clear demand from businesses, especially SMEs and microbusinesses, for better protection and effective action against misleading practices in a business-to-business context, which, however, lies outside the scope of Directive 2005/29/EC;
- D. whereas the level of financial loss in the EU arising from misleading marketing practices is not known, but on the basis of certain national statistics could be estimated at billions of euros each year;
- E. whereas misleading marketing practices cause market failures and distortions of competition, impairing the ability of businesses to make informed and hence effective choices;
- F. whereas SMEs, and in particular small businesses and microbusinesses, are the main victims of misleading marketing practices, although such companies are a key driver for growth in Europe; whereas schools, churches, hospitals, NGOs, and municipalities and other public authorities are also being targeted;
- G. Whereas Parliament has repeatedly expressed its concern over the problem of misleading marketing practices, which are often of a cross-border nature, and has called on the Commission and the Member States to step up their efforts in terms of raising awareness, strengthening cooperation, enforcement and legislation;
- H. whereas misleading marketing practices have a knock-on effect on consumers, who are, as a result, charged more for products and services;
- I. whereas these practices go under-reported, as victims of misleading marketing practices often feel ashamed and refrain from reporting such practices to enforcement authorities or comply with payment demands; whereas in view of this it is extremely important that those authorities facilitate reporting and give sufficient priority to such cases;
- J. whereas Member States have implemented Directives 2005/29/EC and 2006/114/EC differently, leading to significant differences between national provisions in those fields; whereas such differences contribute to market fragmentation and create uncertainties over the legal enforcement of EU rules concerning businesses, especially in a cross-border context;
- K. whereas rogue traders exploit the highly uneven levels of protection for businesses existing

¹ INT/675 - CES1233-2013_00_00_TRA_PA.

across the Member States, with only Austria and Belgium having included a specific ban on misleading directory schemes in their legislation, while the Netherlands is currently preparing a similar law;

- L. whereas it is essential to apply a coherent approach, striking a balance between prevention and punishment; whereas unless there are clear legal provisions addressing the problem the enforcement authorities will remain hesitant to act;
 - M. whereas at present rogue traders are very difficult to trace and prosecute, as they often send invoices from one country to another while their bank account is in yet another country, thus also making money transfers difficult to trace;
 - N. whereas, owing to their small scale and limited resources, it is often unfeasible for SMEs, and microbusinesses in particular, to individually mount legal challenges against rogue traders established in a different jurisdiction;
1. Welcomes the Commission communication, but stresses that an additional effort is needed, especially with regard to enforcement;
 2. Is deeply concerned about the negative impact of deceptive, misleading and unfair marketing practices on economic growth, especially for SMEs, and on fair competition within the internal market, especially in Member States that are less developed and worst affected by the financial crisis;
 3. Asks the Commission to clarify the scope of Directive 2006/114/EC in order to allow better protection for businesses against misleading marketing practices;

Prevention and information

4. Stresses that a better exchange of information between Member States is needed; calls on all Member States to create or assign a national focal point to which businesses and other victims of misleading practices can report them and can obtain information on judicial and non-judicial means of redress, as well as help and expertise regarding the prevention and tackling of various forms of fraud; considers that each focal point should maintain a database recording all types of misleading marketing practices and including easy-to-understand examples; calls on the Commission to ensure coordination of a smooth exchange of information from the national databases, inter alia by facilitating the setting-up of a rapid alert system identifying new practices, whilst taking account of the budgetary limitations;
5. Believes that the national focal points should play an active role in sharing information between public authorities, citizens and businesses, and should work together in order to warn each other of new misleading practices and assist SMEs in the settlement of cross-border disputes by providing defrauded companies with information on judicial and non-judicial means of redress; believes that these national focal points should be responsible for communicating their general findings to the public of the Member State concerned on a regular basis;
6. Calls on national as well as international business organisations, and in particular SME organisations, to work closely together with the national focal points; in this regard, also welcomes public-private cooperation;
7. Supports the Commission's intention to investigate the possibility of introducing, on the basis of validated criteria, an EU-wide blacklist of misleading marketing practices, and, if practicable, of companies who have been repeatedly convicted for such practices; recommends that such a blacklist should be coherent with that which already exists under the Unfair Commercial Practices Directive, should be exhaustive, and should include clear

definitions of misleading marketing practices;

8. Calls on Europol to play a more active role in tackling these forms of fraud by collecting information regarding cross-border forms of misleading marketing practices and by analysing the structures behind the perpetrating companies, and also to provide mechanisms for quick exchanges of up-to-date information on these practices and structures among national enforcement authorities;
9. Underlines the need for national enforcement authorities to work more closely together with providers whose services have been used by perpetrators of misleading marketing practices, such as banks, telephone companies, postal services and collection agencies, in particular by stepping up the exchange of information, in order to help prevent rogue companies from operating;
10. Urges the Commission and the Member States jointly to promote initiatives to educate and inform all business undertakings and promote exchanges of best practice between them, thereby ensuring that they are aware of the dangers;

Enforcement and prosecution

11. Emphasises the fact that different levels of protection and public enforcement mechanisms among Member States are an obstacle to running advertising campaigns across national borders, and that this leads to major legal and operative uncertainties for businesses;
12. Notes with concern that the investigative authorities in a number of Member States are extremely unwilling to take up cases of misleading marketing practices because of the lack of clarity of the existing provisions, and that they have no confidence that the burden of proof can be sufficiently established; underlines the need for government to be proactive in tackling financial and economic crime;
13. Stresses that the investigation and prosecution of misleading marketing practices need to be improved; calls on the Commission, therefore, to draw up guidelines for national enforcement bodies on best practices for national enforcement bodies regarding priorities for investigation and prosecution; calls on the Member States to boost the capacity and expertise of the relevant investigative and judicial authorities;
14. Stresses the need to introduce effective, proportionate and dissuasive penalties, recalling that sanctions can have a preventive effect;
15. Calls on the Commission to establish a mutual cooperation network between national enforcement bodies to improve the implementation of the Directive in cross-border cases;
16. Calls on the Commission to evaluate Parliament's recommendation for a partial extension of the scope of the Unfair Commercial Practices Directive by having Annex I (the blacklist) cover business-to-business (B2B) contracts, in parallel to the consideration of a possible review of Directive 2006/114/EC in order to assess whether this would result in a more coherent approach since it would extend the concept of unfair commercial practices, together with the blacklist, to B2B relations;
17. Welcomes the Commission's intention to propose a clearer definition of misleading marketing practices; in this respect, calls on the Commission to introduce additional definitions for 'green claim' practices;
18. Calls on the Commission to examine, as a matter of priority, how any convictions for using serious and repeated misleading marketing practices could affect the eligibility of the companies concerned for taking part in EU procurement procedures and/or receiving EU funding;

19. Calls on the Member States to ensure that their tax authorities cooperate closely with national focal points by actively inspecting companies which have been reported to use misleading marketing techniques;
20. Stresses the need for a more proactive role for organisations responsible for company registration, such as chambers of commerce, with a view to the identification of suspicious behaviour and the prevention of fraudulent practices;
21. Draws attention, in particular, to the role played by fraudulent debt collection agencies which do not hesitate to put pressure on businesses to pay invoices which they know or could have known to be fraudulent; calls on the Commission and the Member States to propose means of better controlling such agencies, both before and after their formal establishment, and also to consider the possibility of introducing a mandatory requirement for debt collection agencies to report misleading practices;
22. Notes with concern that dispute resolution processes have proven inefficient, lengthy and costly, and that they offer no guarantee of adequate and timely compensation for the damage caused; stresses the need to remedy this state of affairs, and thus enable victims to obtain fair compensation; calls on the Member States to introduce, where applicable, national laws making it possible for the victims of misleading marketing practices to act collectively in a case against a rogue company, in line with the recently published Commission Recommendation C(2013)3539 and Commission Communication COM(2013)0401; stresses that, in order to avoid abusive litigation, the victims should be represented by a qualified entity, as outlined in the Commission documents;

International cooperation beyond the EU

23. Stresses that misleading marketing practices constitute an international problem which extends beyond individual Member States as well as the EU; calls on the Commission and the Member States, therefore, to pursue international cooperation on the matter, with both third countries and the competent international organisations;
24. Calls on the Commission to step up its involvement in the International Mass Marketing Working Group, which consists of law enforcement, regulatory, and consumer agencies in the US, Australia, Belgium, Canada, the Netherlands, Nigeria, and the UK, and also includes Europol;

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25. Instructs its President to forward this resolution to the Council and the Commission.