

# Teleshopping regulation in the Czech Republic

## PRACTICAL GUIDE OF LEGAL FRAMEWORK AND CASE LAW REGARDING INFRINGEMENT OF LAW AND FINES

### Sources:

Act No. 40/1995 Coll., on the Regulation of Advertisement

Act No. 634/1992 Coll., on Consumer Protection

Act No. 231/2001 Coll., on TV and Radio Broadcasting

Act No. 379/2005 Coll., on Protection against harm done by tobacco products, alcohol and other addictive substances)

Act No. 46/2000 Coll., the Press Act

Act No. 258/2000 Coll., on Public health

Act No. 128/2000 Coll., on Municipality

Act No. 110/1997 Coll., on Food and tobacco products, as amended

Regulation 54/2004 Coll., on Food for special nutrition, infant nutrition

Code of Advertising Practice – the Czech Advertising Standards Council

Act No. 500/2004 Coll., the Administrative Act

Act No. 455/1991 Coll., the Trade licensing Act

Act No. 552/1991 Coll., on State control

Act No. 89/2012 Coll., New Civil Code (consumer contract, unfair competition)

Act No. 480/2004 Coll., on certain services of the information society

Act No. 256/2001 Coll., on undertaking

## REGULATION IN ACT NO. 231/2001 COLL., ON TV AND RADIO BROADCASTING

Teleshopping is subject to the Council for Television and Radio Broadcasting (RRTV) execution of state administration and supervision of broadcasting. The Council is bound by above mentioned acts and controls the legality of teleshopping spots and broader streaming.

According to the Act teleshopping means direct offer of goods, including real property, rights and duties, or services, which offer is meant for the public and which is included in radio or television broadcasting in return for payment or other consideration.

Broadcasters are not allowed to broadcast commercial communications, teleshopping concerning medicinal products or medical treatment available only on medical prescription in the Czech Republic.

A broadcaster shall ensure that:

- a) advertising and teleshopping are readily recognisable as such; with a radio broadcaster this shall be clearly distinguishable by audio means, and for a television broadcaster it shall be clearly distinguishable by audio, visual or audio-visual means or by spatial means separated from other broadcasts,
- b) advertising and teleshopping for erotic services and erotic products is not included in broadcasting in the period from 6.00 a.m. to 10.00 p.m.; this obligation shall not apply to broadcasters where broadcasting to the end user is available under a written contract concluded with a person aged over 18 years and is accompanied by the provision of a technical measure which allows that person to restrict minors.

During each hour of television broadcasting by any broadcaster the time allocated to advertising and teleshopping spots shall not exceed 12 minutes. Coherent teleshopping windows shall last without interruption for at least 15 minutes and shall be clearly identified by optical and acoustic means. A licensed television broadcaster may, on a programme which is not dedicated exclusively to teleshopping, broadcast teleshopping windows beyond the time limits for the broadcasting of advertising and teleshopping spots.

For radio broadcasters the time allocated to advertising and teleshopping shall not exceed 25% of the daily broadcasting time.

Above provisions shall not apply to the television broadcasting of a programme exclusively focused on the promotion of the broadcaster's own television broadcasting and the products, services and other activities associated with the operation of own television broadcasting.

## REGULATION IN ACT NO. 634/1992 COLL., ON CONSUMER PROTECTION

### UNFAIR TRADE PRACTICES § 4

A trade practice is unfair if the entrepreneur's conduct towards the consumer is contrary to the requirements of professional diligence and is capable of significantly influence that consumer's decision in such a way that the consumer may make a business decision that he would not otherwise have made.

If a trade practice is directed at consumers who are particularly vulnerable due to mental or physical infirmity or age, its unfairness is evaluated with respect to the average member of that group; this does not affect the usual overstatement used in advertising.

The use of unfair trade practices in the offering or sale of products or the offering or provision of services or rights is prohibited. Misleading and aggressive commercial practices are particularly considered unfair.

### **DECEPTIVE TRADE PRACTICES § 5**

A trade practice is deceptive

- a) if it uses incorrect information,
- b) where important information in itself true, but may mislead the consumer given the circumstances and the context in which it was used,
- c) If an entrepreneur fails to provide important information which, with regard to all the circumstances, can reasonably be required from the entrepreneur; this failure is also considered to mean stating important data in an unintelligible or ambiguous manner, or
- d) if the presentation of a product or service, including comparative advertisements and marketing, leads to confusion with other products, services or distinguishing attributes of a different entrepreneur,
- e) if a commitment contained in a code of conduct to which an entrepreneur has committed is not complied with, in the case of a clear commitment that can be verified, and in his trade practice the entrepreneur states that he is bound by that code.

Deceptive trade practices also include the offer or sale of products or services which infringe certain intellectual property rights, as well as storage of such products for the purpose of offering or sale, as well as the unauthorised use of markings protected under a special law<sup>4b</sup> in business relations.

### **AGGRESSIVE TRADE PRACTICES § 6**

A trade practice is aggressive if, taking account of all the circumstances, it impairs the consumer's capacity to make a free decision through harassment or coercion, including the use of force or undue influence. The following circumstances in particular are taken in account when judging whether or not a trade practice is aggressive:

- a) the timing, location and duration of the trade practice,
- b) manner of conduct, the use of threats and abuse,
- c) the deliberate exploitation of an adverse situation a consumer is in,
- d) unreasonable obstacles to the exercising of consumer rights, or
- e) the threat of unlawful conduct.

## REGULATION IN ACT NO. 40/1995 COLL., ON THE REGULATION OF ADVERTISEMENT

The Act determinate what is considered to be advertisement. It further regulates specific products:

- Tabacoo products
- Alcoholic beverages
- Medicines, Pharmaceuticals
- Food and nutrition for infants, nurseling
- Products for plant protection
- Veterinary healing products
- Timesharing
- Guns and munition

The Act moderate fines for natural person and companies (legal person) that are imposed by several surveillance institutions:

- State Institute for Drug Control
- the Ministry of Health;
- the State Phytosanitary Administration;
- the Institute for State Control of Veterinary Biologicals and Medicaments;
- the Office for Personal Data Protection;
- advertising for food and dietary supplements and nutrition and advertising for cosmetics is supervised by the Regional Trade-Licensing Offices
- the Czech trade inspection
- any Regional hygienic stations

## THE MOST FREQUENT MISTAKES OF TEleshopping COMPANIES WHAT FOR RRTV (COUNCIL FOR RADIO AND TELEVISION BROADCASTING) AND MUNICIPAL OFFICES IMPOSE FINES

1. unfair trade practice (incorrect information) – not stated the correct price
2. unfair trade practice (incorrect information) – price on TV screen is not the same as on the website in e-shop
3. unfair trade practice (incorrect information) – promotion or sale is misleading
4. unfair trade practice (misleading or untrue information) – information about the product is not true, not provable, legitimate, defensible
5. the company sells products without certificate that is needed in the Czech Republic (cosmetics without permission, car product without certification)
6. the spot does not comprise direct promotion

### Case law

Fines from 10.000 CZK up to 1.000 000 CZK

[www.rrtv.cz](http://www.rrtv.cz)

[www.nssoud.cz](http://www.nssoud.cz)

[www.usoud.cz](http://www.usoud.cz)

### Attorney at law

[www.ondrejova.cz](http://www.ondrejova.cz)

Unfortunately the Acts are not provided in English, also judgements are issued only in the Czech language.

### DISCLAIMER:

This handbook is intended to highlight issues, provide basic information about Criminal law and Proceedings in English. It is intended to be comprehensive, nor to provide legal advice. Should you have any questions or issues reported here or on other areas of law, please contact us.

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