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The Plenum of the Spanish Chamber of Deputies has recently passed an Act that modifies the laws ruling unfair competition and unlawful advertising, with the purpose of improving consumer's safety.

Said Act, at joint proposal of the Ministries of Health, Social Issues, Economy, Industry and Commerce, incorporates two European Acts into the Spanish legal system: the Directive 2002/29/CE, relevant to unfair commercial practices, and 2006/114/CE, on misleading publicity and comparative advertising.

This Act not only contributes to increase consumer's safety, but also provides legal guarantees to those companies that exercise rightful market competition as opposed to those firms whose unprofessional working practices violate the concept of good faith and distort the consumer's behaviour significantly.

Misleading and aggressive practices

For the first time in the history of the Spanish legal code, the new Act regulates aggressive and unfair commercial practices, that is, those that either provide false information or somehow contribute to mislead consumers; this can be easily observed in the way some companies manage their after-sale services or handle complaints.

Likewise, the use of harassment, coercion, unlawful influence or any other similar behaviour that might have a significantly negative effect on the consumer's behaviour or freedom of choice when selecting certain goods will also now be considered as unfair and aggressive.

Thus, activities such as phone spam are now regarded as unfair, and are, consequently, punishable.

Other examples of unfair practices

These include, among others:

- Carrying out a public comparison of the activity or the services provided by a certain entity with respect to a third party, whenever said activity applies to terms that are not analogous, relevant or comparable.
- Withholding certain information that the consumer might require for a conscious, responsible purchase decision.
- Conveying information in an unclear, unintelligible, ambiguous or untimely manner.
- Leading consumers to make sudden decisions on the false pretext that a certain good or service will only be available for a limited period of time.
- Misleading users into believing that the rights that are lawfully theirs are in fact a distinctive feature of the product or service offered.

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The new Act also enters several modifications on four laws governing the following areas: consumers and users defence, unfair competition, advertising and retail trade.

These new rules have set a unique legal scope for deceitful behaviour and aggressive practice, regardless of whether the target of the commercial activity is consumers or companies.

With the purpose of fighting said irregular behaviour, the new legal text considers the possibility of allowing the affected or the relevant authorities to initiate, among others, petitions for injunction, amendment or damage compensation, or prohibition of reiteration.

Encouragement of Codes of Conduct

Additionally, the new Law seeks to encourage the implementation of codes of ethics among professional and business organisations that will contribute to control unfair publicity and also to increase consumer's protection. Consumer organisations will be welcome to participate in the drawing-up of the terms of said codes.

These codes of conduct will be in compliance with the rules established by the competition laws and will be conveniently divulged.

Furthermore, these self-adjustment tools will be assisted by independent bodies whose role will be to ensure that the commitments agreed upon by the companies are complied with. Also, efficient methods of claim management will be implemented.

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