

by *Víctor Ramírez*

New amendments to the Federal Law for Consumer Protection (FLCP) came into force on December 16, 2011, providing two main changes, namely: (i) the misleading information/advertising (deceitful or abusive) will be considered now as a serious infringement, therefore the amount for the corresponding economical sanctions has been increased, and (ii) providing additional faculties to enable the Consumer Protection Bureau (Procuraduría Federal del Consumidor -"PROFECO") to coordinate any Federal, local or municipal agency to protect consumers from misleading information/advertising, as well as enhancing its faculties to analyze the information/advertising to determine if it is misleading or not.

The FLCP contains a set of general rules for the advertising of practically all products and services. It is focused on protecting consumers' rights, whereas "PROFECO" is the governmental agency in charge of investigating and resolving these matters.

Before this recent amendment, the FLCP already provided that all information (including both labeling and advertising) related to products and services displayed by any means or through any media shall be truthful, verifiable and free of any text, dialog, sound, image, mark, denomination of origin or other description that may mislead consumers or tend to confuse them by being "deceitful or abusive."

According to the FLCP, the information/advertising is considered to be deceitful or abusive when it refers to characteristics or information related to a product that, whether or not truthful, misleads consumers or confuses them due to the imprecise, false, exaggerated, incomplete, artificial, or tendentious manner in which it is presented. This means that all information must not only be truthful and verifiable, but also must be presented in such a manner that it may not be considered to be deceitful or abusive.

The recent amendments aim to provide the PROFECO with broader and stronger faculties to stop the misleading information/advertising (deceitful or abusive), since from the past 5 years the Mexican market has been flooded with bold new

television advertising and publicity campaigns (which appear to include misleading information) for the so-called "miracle" or "infomercial" products, that led consumers to believe they will obtain spectacular results that these products usually never deliver.

Accordingly, PROFECO will have now faculties to coordinate any Federal, local or municipal agency to implement any action that may be necessary in order to protect consumers from misleading information/advertising through all the country.

Likewise, PROFECO is now enabled to assess and consider additional elements and circumstances (such as the point in time when an advert is aired and the particular and economical circumstances in the market that may be relevant for the case) when analyzing if the information/advertising is misleading.

Our Firm will follow up and monitor on the practical implementation of these new regulations to keep our clients updated on the possible impacts to the members of the industry.