

## HEALTH CLAIMS IN FOOD SUPPLEMENT ADVERTISING

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### Abstract

Advertising plays a major role in food supplement sales, but it must not mislead the consumer on the product properties. The aim of this paper was to research the use of health comments in food supplement advertising in Romania. The paper studied the European Union and the Romanian legislation in the field and analysed an example of an unlawful advertisement case. The paper concludes that food supplement advertising in Romania is not adequately monitored regarding the standards that ensure patient safety and should therefore be analyzed according to the European model.

### Rezumat

Publicitatea are un rol important în creșterea vânzărilor de suplimente alimentare, dar ea nu trebuie să inducă în eroare consumatorul în privința proprietăților acestora. Lucrarea a avut ca scop cercetarea modului de utilizare a mențiunilor de sănătate în publicitatea suplimentelor alimentare în România. S-a studiat legislația în domeniul Uniunii Europene și a României și s-a analizat un caz nesanționat de publicitate neregulamentară. S-a concluzionat că în România supravegherea publicității suplimentelor alimentare nu se realizează în permanență la standardele necesare pentru siguranța consumatorilor, necesitând în acest scop analiză și decizie pe baza modelului european.

**Keywords:** food supplement, health claims, advertising

### Introduction

The food supplement market has continuously expanded in recent years, not only in Romania [15], but also in the entire European Union [16], as a result of gradual changes in people's idea of a healthy lifestyle [8]. Also in Romania, the change in people's lifestyle, especially due to information and education, has led to increased consumption of health-related products, including food supplements. Together with the development of distribution networks, advertising has been a major factor that contributed to the sales of such products [1,13]. Advertising, however, especially in the field of health-related products, is the subject to special rules in order to ensure consumer safety and to protect consumers from false and misleading information about such products. The aim of this paper is to analyse Romanian legislation and its application on the use of health claims in food supplements advertising, in the context of the European legal framework.

### **Materials and Methods**

The research was carried out using the European and the Romanian legislation on health claims made on food supplements:

- Directive 2002/46/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to food supplements;
- Regulation no. 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods;
- Joint Order no. 1228/2005/63/244/2006 of the Ministry of Agriculture, President of the National Sanitary Veterinary and Food Safety Authority and Ministry of Health on the approval of technical norms for the marketing of pre-dosed food supplements of animal and vegetal origin and/or their mixture with vitamins, minerals and other nutrients;
- Order no. 1069/2007 of the Ministry of Health for approval of norms for food supplements;
- Decision no. 187/2006 of the National Audiovisual Council on the Regulation of the Content of Audiovisual Program.

The methods used in the research are the interpretation methods [5] and the homeostasis model to distinguish between foods (including food supplements) and medicines, adopted by the Council of Europe, through the Partial Agreement in the Social and Public Health Field [2].

### **Results and Discussion**

According to the Directive 2002/46/CE, the labelling, presentation and advertising must not attribute to food supplements the property of preventing, treating or curing a human disease, or refer to such properties, thus differentiating between food supplements and medicines. It states that the regulations adopted by Member States shall be applied in such a way as to prohibit trade in products which do not comply with the Directive [4]. According to Regulation no. 1924/2006, health claims associated with food supplements include any claim that states, suggests or implies that a relationship exists between a food supplements category, a food supplement or one of its constituents and health. It also states that the competent authorities of the Member State may request a food business operator or a person placing a product on the market to produce relevant elements and data establishing compliance with this Regulation [14]. Once established by law that food supplements may be accompanied by health claims, a new problem occurred, namely that of differentiating between food supplements and medicines, that have therapeutic indications, prevent or treat diseases, restore,

correct or modify body functions. Therefore, in order to protect consumers from abusive or useless consumption of food supplements as medicines, a clear differentiation must be made between these two, both in the legislation and its application. However, the legislation does not provide criteria to differentiate between, for instance, a health comment regarding disease risk reduction and an indication of disease prevention. Consequently, the Council of Europe, through the Partial Agreement within the Social and Public Health Field, created the homeostasis model to distinguish between foods (including food supplements) and medicines. Based on the legal definitions of food supplements and medicines, useful practical guidelines were developed in order to establish whether a product should be considered food supplement or medicine, especially since some substances, mainly those of vegetal origin, may be found in both supplements and medicines. Two basic criteria must be used according to the homeostasis model: the intended use of the product and the nature of the induced effect on one or more physiological parameters [2]. This model may also be used to determine whether health claims for food supplements, especially those included in their advertising, comply with the legislation.

In Romania, the Joint Order no. 1228/2005/63/244/2006 states that the food supplements advertising must be truthful, should not mislead the consumer and should present product properties according to their content. It also mentions that food supplements labelling and advertising shall not overlap with regulations on the marketing of medicines [11]. The Order no. 1069/2007 applies the provisions of the Directive 2002/46/EC. It also establishes that food supplement advertising is allowed only following approval of advertising content by the Public Health Authority within the Ministry of Health and cannot refer to treatments, prevention and diseases. [12] The rules on the content of food supplement advertising are included in the Decision of the National Audiovisual Council no. 187/2006. It states that affirmations regarding health shall rely on solid scientific facts and shall not create deceptive ideas regarding healthy benefits. Food supplements shall not be ascribed characteristics of prevention, treatment or healing of diseases and no such characteristics shall be referred to [3]. In the last years, the National Audiovisual Council adopted a few sanctions in cases of food supplements advertisements that failed to respect the Decision. There are also food supplements advertisements which were not sanctioned by the National Audiovisual Council or other responsible authorities, although they were associated with the property of preventing or treating diseases. "Bioflu<sup>®</sup> – cough syrup with ivy extract" is such a product whose name strongly implies "the intended use of the product". The manufacturer produces the Bioflu<sup>®</sup>

range of products, which includes five products registered as medicines at the National Medicines Agency [10] and the food supplement “Bioflu<sup>®</sup> – cough syrup with ivy extract” notified at the Institute of Food Bioresources [9]. On the company website, the Bioflu range of products, including the above-mentioned food supplement, is promoted with the following slogan: “*It quickly beats cold and flu*”. The Bioflu medicines contain active substances such as paracetamol, pseudoephedrine, dextromethorphan, chlorpheniramine and guaifenesin in various concentrations; only the food supplement contains 0.3% *Hedera helix* (Common ivy) leaf dry extract as the sole active substance. The product leaflet clearly indicates the manufacturer’s intention of selling the product as a medicine: “*the ivy extract dissolves bronchial mucus and soothes coughing*”, “*to be used as an adjuvant in the symptomatic treatment of acute or chronic inflammatory disorders of the respiratory tract accompanied by cough*”. As a food supplement, the product may have been accompanied by health comments, if these were scientifically proven according to the Regulation no. 1924/2006. Although ivy is known for its ethno-botanical use [17], neither *Hedera helix* plant, nor *Hedera helix* leaf dry extract, in association with respiratory health comments, are on the general function health comments list published by European Food Safety Authority [7] or on the list of health comments authorized by the European Commission based on newly developed scientific evidence [6]. During the notification stage, the Institute of Food Bioresources should not have allowed the marketing of a food supplement with this name and properties. The National Audiovisual Council should have sanctioned the TV channels for this advertising, while the Ministry of Health and the National Sanitary Veterinary and Food Safety Authority should have banned the manufacturing and sale of this product as a food supplement.

### Conclusions

The European and Romanian legislation provide the appropriate legal background for activities involving food supplements, including ethical advertising for correct and safe consumer use. However, the Romanian market features food supplements whose advertising fails to comply with the health claims rules. The competent authorities do not always manage to monitor food supplement advertising according to current legal standards. The activity carried out by the Romanian Audiovisual Council, the Ministry of Health and the National Sanitary Veterinary and Food Safety Authority could be improved if these institutions analysed the advertising according to the homeostasis model, in effect at the European level, in order to protect consumer health and safety.

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