

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 30 P3:34

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SENATE
S. No. 273

Introduced by Senator S. R. Osmeña III

EXPLANATORY NOTE

Joan Robinson and H. Chamberlin coined the term "monopolistic competition" to describe a type of market situation that is closer to reality than the highly idealised notion of perfect-competition on one extreme, and monopoly on the other extreme.

The theory of monopolistic competition rests on the notion of contestable markets. A firm exercises monopoly powers over its own branded products, which it differentiates from the generic product through advertising. The contestability of such monopoly depends upon the capability of new entrants to grab segments of the market through further product differentiation and advertising.

Advertising plays a central role in the present consumerist society, disseminating product information among consumers, thereby empowering them to make wiser, more intelligent consumption choices. Advertising wields a powerful influence on people's preferences, on occasion creating demand for hitherto unimagined goods, and leaving its subliminal imprint on the public psyche.

The pervasive influence of advertising, especially as it invades our homes through TV, radio and print media underscores the need for a public policy that will safeguard the public from abusive advertising practices. The youth, especially, have to be protected from the effects of advertising claims that have no basis in truth; those that seek maliciously to inflict harm on other producers; and those that popularize anti-social and immoral values.

This bill addresses the above concerns by proposing minimum ethical standards that advertisers should conform to, and through the establishment of the National Advisory Board on the Advertising Industry, a government agency that will oversee the implementation of the provisions of this bill.

In view of the foregoing, early passage of this bill is earnestly requested.


SERGIO OSMEÑA III
Senator

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AN ACT
REGULATING THE ADVERTISING INDUSTRY IN ORDER TO PROTECT
CONSUMERS, PROMOTE THE GENERAL WELFARE, AND ENCOURAGE
ADVERTISING WHICH UPHOLDS TRUTH AND INCULCATES IN OUR
PEOPLE DESIRABLE MORAL VALUES AND CULTURAL TRADITIONS,
AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. **National Policy and Principles.** - The Constitution provides
2 that "the Advertising Industry is impressed with the public interest, and shall be
3 regulated by laws for the protection of consumers and the promotion of the
4 general welfare (Section 11 (2), Article XVI)."

5 To add substance to this Constitutional mandate, it shall be the duty of the
6 advertising industry and the media to : (a) preserve, enrich and promote the
7 Filipino national heritage and cultural traditions; (b) sell only those goods and
8 products which are not hazardous to the health and well-being of our people; (c)
9 avoid the use of alien and unrealistic lifestyle and tends to promote the way of
10 life which is not Filipino or Asian in origin; and (d) inhibit themselves from selling
11 or advertising for sale any service of thing which lends itself to an unwholesome,
12 unhealthy, or illegal activity or situation.

13 SECTION 2. **Unlawful Practices.** - It shall be unlawful for any natural or
14 juridical person or entity engaged in advertising or in media which is utilized by the
15 advertising industry, to advertise any good, product, service or idea:

1 (1) Without the adequate warning that it is hazardous to the health, well-
2 being or development of any person;

3 For purposes of this provision, any good, product, service or idea is
4 hazardous when it is a source of danger to life, health or development of a
5 person, including the unborn child, or when it exposes a person or
6 substantially increases the danger or a person to injury, pain or loss, as
7 determined by the proper government body.

8 A warning is adequate when it is reasonably sufficient to give notice
9 beforehand of the danger to a person's life, health or development, as may
10 be determined by the proper government body.

11 (2) Using advertising materials which tend to detract from the dignity and
12 honor of our people, demean, impugn or degrade our Filipino national
13 heritage, or otherwise tend to insult or humiliate our people, in general and
14 our women, in particular;

15 (3) In a manner which distorts the truth, or is false, deceptive or misleading;

16 An advertisement is truthful when it is in accord with fact and reality
17 or with the generally accepted body of scientific knowledge and
18 technology; and advertisement is also truthful when it avoids distortion,
19 misrepresentation or false claims.

20 In determining whether an advertising is false, deceptive or
21 misleading, the following, among others, shall be taken into account: (a)
22 representations made by the advertiser; (b) the extent to which the
23 advertisement fails to reveal material facts in the light of such
24 representations, or materials with respect to consequences which may
25 result from the use or application of consumer products of services to
26 which the advertisement relates under the conditions prescribed in said
27 advertisement, or under such conditions as are customary or usual.

28 (4) Which lends itself to illegal or immoral activities;

1 (5) By engaging in activities which violate or tend to violate any provisions of
2 the Constitution of law.

3 SECTION 3. **Penalties and Sanctions.** - Any natural or juridical person or
4 entity violating this Act shall suffer the penalty of a fine in the amount of Ten
5 Thousand Pesos (P10,000.00) and the suspension, non-renewal, or cancellation
6 of the right to operate or otherwise engage in the activities of the advertising
7 industry in the Philippines.

8 SECTION. 4. **National Advisory Board on Advertising Industry.** - There
9 is hereby created the National Advisory Board on the Advertising Industry (NABAI)
10 an agency attached to the Department of Trade and Industry to advise the
11 Secretary on the formulation of rules and regulations, issuance of directives,
12 program development, and all other matters related to the implementation of this
13 Act. The Advisory Board shall be composed of five members, namely: (1) The
14 President of the Philippine Board of Advertising; (2) a representative of the Press
15 Secretary; (3) a representative of the media; (4) a representative of duly-
16 accredited Consumer Organizations of Associations; and (5) a representative of
17 the private sector or general public .

18 The representative of the media, Consumer Organizations or Associations,
19 and the private sector shall be appointed by the President of the Philippines upon
20 the recommendation of the Secretary, for a term of three (3) years: *Provided,*
21 That for the first three (3) appointees, one (1) shall serve for one (1) year,
22 one(1) shall serve for two (2) years, and one (1) shall serve for three (3) years.
23 The Advisory Board shall annually elect a Chairman from among its members.

24 To assist the Secretary and the Advisory Board, the Secretary shall
25 designate an Executive Director and a Secretariat from among the staff of the
26 Department, with such allowances as may be approved by the Secretary, subject
27 to existing laws and regulations and auditing and accounting laws.

1 SECTION 5 . **Funds.** - There is hereby authorized to be appropriated the
2 amount of One million pesos (₱1,000,000.00) for the operations of the Board and
3 the Secretariat and the implementation of this Act.

4 Thereafter, the operating expenses of the Advisory Board and the
5 Secretariat and for the implementation of this Act shall be included in the budget of
6 the Department as part of its annual appropriations.

7 SECTION 6 . **Transitory Provisions.** - Advertisements which violate this
8 Act and which are being presented through any form of media upon the approval of
9 this Act shall be withdrawn from public presentation within six (6) months from
10 the approval of this Act.

11 SECTION 7. **Separability Clause.** - If any provision of this Act shall be
12 declared unconstitutional or invalid, other provisions thereof not affected thereby
13 shall continue to be in full force and effect.

14 SECTION 7. **Repealing Clause.** - Article 110 of Republic Act No. 7394,
15 otherwise known as "The Consumer Act of the Philippines," is hereby repealed.

16 All laws, decrees, and orders inconsistent with this Act are hereby repealed,
17 amended or otherwise revoked.

18 SECTION 8. **Effectivity.** - This Act shall take effect upon its approval and
19 completion of its publication in at least two (2) national newspapers of general
20 circulation.

21 Approved,