

# Unlawful advertising, health products and self-regulation

## Publicidad ilícita, productos saludables y autorregulación

### Publicidade ilícita, produtos saudáveis e auto-regulação

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#### ABSTRACT

This work analyses the unlawful advertising of products with alleged health benefits through the complaints received by the Spanish self-regulatory system for advertising between 2010 and 2015. A total of 323 complaints are characterised according to the profile of the complainant, the advertiser, the mass media and the decision of the advertising jury. The work also examines the conduct of advertisers, in breach of general advertising regulations on unfair or misleading advertising contents, and of specific regulations on the advertising of products with alleged health benefits.

**Keywords:** Unlawful advertising, misleading advertising, health promotion, regulation, self-regulation, complaints.

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#### RESUMEN

*El trabajo estudia la publicidad ilícita de los productos que ofrecen supuestos beneficios para la salud a través del conjunto de las reclamaciones presentadas ante la asociación autorreguladora de la actividad publicitaria en España entre 2010 y 2015. Se caracteriza un total de 323 reclamaciones según el perfil del reclamante, el anunciante demandado, el medio de difusión y el tipo de resolución del jurado. Se examina el comportamiento de los anunciantes respecto del incumplimiento de la legislación publicitaria general y de la legislación específica que regula la publicidad de productos con supuesta finalidad sanitaria.*

**Palabras clave:** Publicidad ilícita, publicidad engañosa, promoción de la salud, regulación, autorregulación, reclamaciones.

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#### RESUMO

O trabalho estuda a publicidade ilícita dos produtos que oferecem supostos benefícios para a saúde através do conjunto das reclamações apresentadas ante a associação autorreguladora da actividade publicitária em Espanha entre 2010 e 2015. Caracteriza-se um total de 323 reclamações de acordo com o perfil do reclamante, o anunciante demandado, o meio de difusão e o tipo de resolução do júri. Examina-se o comportamento dos anunciantes em relação ao incumprimento da legislação publicitária geral e da legislação específica que regula a publicidade de produtos com suposta finalidade sanitária.

**Palavras-chave:** Publicidade ilícita, publicidade enganosa, promoção da saúde, regulação, autorregulação, reclamações.

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## INTRODUCTION

The idea of achieving and maintaining a better quality of life has transformed in recent times in an emerging market for a lot of products and services focused on improving health. Noteworthy is the increase in commercial strategies to associate food with health, resulting in the so-called medicalization of food (Díaz Méndez & González Álvarez, 2008, p. 129). In parallel with this growing phenomenon, there are increasingly frequent complaints relating to fraud of many of these products and the risk that in some cases they may pose for health.

In Spain, in little more than half a century, we have moved from a basic food basket that brought the calories needed for daily performance of professional or everyday work to one focused on natural, fresh, organic, with no calories or fat-free, in which functional foods -that take care of health and feed- feature prominently. On the other hand, the socio-political, economic and cultural context, coupled with the influence of the media, constantly reminds us that it is not enough to be well fed and healthy, but also stay young and healthy fleeing from the sedentary lifestyle (Moscoso, Serrano, Biedermann & Martín, 2013), while the active life is encouraged. And so the search for a good body image, the concern for the care of the body (Sossa Rojas, 2015), to recover, or not losing, youth, seems to be key to professional and personal success and social welfare.

This ideal image has become one of the main personal goals for many women, which are a particularly sensitive target to these factors and vulnerable to publicity that feeds certain standards of beauty -most of them fictitious times and unreachable- with serious psychological consequences that result in frustration and, in the worst cases, serious behavioral disorders (Carrillo Durán, 2004; Carrillo Durán, Sánchez Hernández & Jiménez Morales, 2011).

In advanced societies, vertebrate around the logic of mass consumption, some advertisers use unfair techniques to increase or maintain their market share through speeches or implausible exaggerations regarding their products or components. This deception affects the fair play over their competitors and the economy of consumers who purchase a product

or service that does not meet the expectations generated by advertising and that long-term can affect health in some categories such as food, due to the intake of products that are not as safe as advertised (Peiró Abásolo, 2006).

In Spain, the general legal framework is Act 34/1988 of November 11, of General Advertising (LGP), whose Article 3 states misleading as one of the forms of illegal advertising. However, without derogating LGP and following the European guidelines for its implementation by all member countries, the Act 29/2009, of 30 December, was passed, amending the legal regime of unfair competition and advertising to improve the protection of consumers and users (LCDP). Article 5 considers unfair by misleading the advertising that, among other things, contains false information or, that even being truthful, because of its content or presentation deceives or is likely to mislead receivers being susceptible to alter their economic behavior always infringing any of the following: a) the existence or nature of the good or service and b) the main characteristics of the good or service such as its availability, benefits, risks, execution or composition (p. 112043).

Furthermore, Article 7 states that it is considered misleading by unfair advertising that ignores or hides "information necessary for the receiver to adopt or to take a decision concerning their economic behavior with due knowledge of the facts (...) [or] if the information provided is unclear, unintelligible, ambiguous" (p. 112044).

On the other hand, there is a specific legislation regulating advertising in the field that this work is attached. Royal Decree 1907/1996, of 2 August, on advertising and sales promotion of products, activities or services intended with health purpose regulates advertising of many health related products as pseudo-medicines, beverages, food, cosmetics and slimming products. This legislation goes in the same direction of other national laws such as LGP and Act 17/2011, of July 5th, of food safety and nutrition -transposition of Regulation (EC) N°. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims in the food. Therefore, this paper focuses its study on

products that do not need a prescription for purchase and consumption, but that by their commercial description and the elements used for advertising are described as next to a medicine.

Against unlawful advertising and in defense of the rights of consumers, the mechanisms of the judicial system is ineffective because judges are usually unfamiliar with advertising (Edelstein, 2003, p. 537), but also because the communicative dimension of advertising is opposed to the law – slower and more careful (Aznar, 2000)– and more in line with self-regulation which, according to Boddewyn, is faster, cheaper, more efficient and effective than state regulation (1985, p. 131). Also, from the point of view of the consumer, the court is prohibitively due to its high cost. However, the existence of a self-regulation system of advertising is a direct and accessible way to defend their rights against an advertisement that, somehow, would have caused an economic, moral or other prejudice. In this regard, Act 29/2009, of 30 December, establishing the legal regime of unfair competition and advertising to improve the protection of consumers and users, includes the existence of the Codes of Conduct and its control and compliance. Specifically, Chapter V, Codes of Conduct, Article 37 states that “self-regulation systems will have independent supervisory bodies to ensure the effective implementation of the commitments made by member companies”.

This paper aims to analyze the characteristics of the illicit advertising of products with intended health purposes through the complaints to the self-regulatory system of the Spanish advertising activity throughout the period 2010-2015. The importance of focusing on these products is motivated by the fact that, to economic fraud, can be added a risk to health. As Daynard (2004) states, “the practice is actionable because it creates a reasonable likelihood that consumers will purchase or use the service or product to their economic or physical detriment” (p. 25). Therefore, it is about showing the abuses in which many advertisers who take advantage of the lack of control of public authorities and excessive benevolence of punitive resolutions (Sahuquillo, 2010) regarding this type of unlawful.

## CLAIMS OF HEALTH-RELATED PRODUCTS WITHIN THE FRAMEWORK OF SELF-REGULATORY SYSTEMS

The analysis of advertising products beneficial for health is an area that has aroused great interest in the scientific community. However, there has been a lack of studies that have analyzed the advertising complaints about health-related products. Thus, from different areas and approaches, some research has focused on compliance with legal regulations and codes of conduct governing the sector in the country origin of the study. There is a presence of works on advertising of medicines, functional foods, the information contained in the labels and packaging of food products, nutritional claims or advertised nutritional contents, some of which analyzed the provisions of the FDA (Food and Drug Administration) (Ippolito & Mathios, 1993; Katan & De Roos, 2004; Parker, 2003; Roe, Levy & Derby, 1999; Van Trijp & Van der Lans, 2007; Zwier, 2009), an organization with a notorious activity (Roe et al., 1999) that our equivalent in Spain lacks. Also worth noting are some studies based on analysis of legislation related to health, especially in force in the United States and the European Community (Brennan, Czarnecka, Dahl, Eagle & Mourouti, 2008; European Commission, 2003; Greene, Prior & Frier, 2001; Hawkes 2004). In Spain, Peiró Abásolo (2006) performed a descriptive analysis– case law– of the resolutions of the jury of the Association for Self-regulation of Commercial Communication – AACC (hereinafter *Autocontrol*)- on so-called miracle products, while Perelló-Oliver and Muela-Molina (2011) conducted a content analysis of radio spots which violated the rules governing advertising of products with purported health purposes.

Food advertising is another area which some researchers have studied. Thus, we find works framed on the legal rules governing this advertising (Hawkes, 2008; Story & French, 2004) and from self-regulation (Caraher, Landon & Dalmeny, 2006), especially in the United Kingdom (Hawkes, 2005) and in the United States (Byrd-Bredbenner & Grasso, 2001). In Australia we can find greater scientific production on self-regulation of television advertising aimed at children and adolescents (Handsley, Mehta, Coveney & Nehmy, 2009; Henderson, Coveney, Ward & Taylor, 2009; Morton, Stanton, Zuppa & Mehta, 2005).

Regarding the previous studies that have examined the complaints filed against the corresponding self-regulatory bodies, stands the one of Armstrong and Ozanne (1983), which analyzed 1180 cases investigated by the National Advertising Division (NAD) of the United States, while Lawson (1985) did the same in the United Kingdom with a sample of 506 complaints investigated by the Advertising Standards Authority (ASA). In Australia, Kerr and Moran (2002) observed the trend in filing complaints for five years while Jones and Van Putten (2008) compared two years with two countries: Australia and New Zealand. In Canada, Wyckham (1996) focused on the analysis of complaints about misleading advertising during the period 1980-1994 and in Norway, Sto and Glefjell (1992) analyzed the complaints submitted to the Consumer Ombud between 1973 and 1990. In Spain, Medina and An (2012) conducted a comparative study of the complaints made in *Autocontrol* and the NAD. However, after analysis of theoretical and empirical backgrounds, we have not found specific works that can be taken as reference for the development of this research.

In any case, the general objective outlined above is specified in the development of the following research questions:

- **Research Question 1 (RQ1):** What are the characteristics of complaints against self-regulatory bodies on the advertising of products offering health benefits from the point of view of the profile of the complainant, the offending advertiser and advertising media?
- **Research Question 2 (RQ2):** What is the behavior of advertisers regarding the breach of the general and specific legislation that regulates these products in Spain through the illicit committed, both of the content of the advertising message as of formal aspects or execution elements?
- **Research Question 3 (RQ3):** What are the characteristics of the complaints regarding the resolutions given by the jury and what relationship is established with misleading advertising?

## METHODOLOGY

As already mentioned above, it is the self-regulatory body of advertising that manages complaints, since the courts is only used in rare cases by competitive brands when they consider that there is a clear disadvantage for unfair behavior by another brand. Therefore, this paper has analyzed the content of all the complaints filed in *Autocontrol* from 2010-2015 inclusive.

Of the entire universe of complaints for the period 2010-2015, the product categories in which the study has focused are related to health (Perelló-Oliver & Muela-Molina, 2011): (1) Food, (2) Beverages (3) Beauty and Hygiene, and (4) Health; categories drawn from the list of 22 products/services used by Infoadex (2015). For this research, we analyzed the entire universe of complaints relating to these four types of products, totaling 323, representing nearly 45% of the total. This accumulated adds 42 cases in 2010, 39 in 2011, 33 in 2012, 34 in 2013, 73 in 2014 and 91 in 2015.

The review of the background and the specific objectives of the work guides the relationship of variables and attributes that have articulated the development of the analysis of all of the complaints under this work:

1. Year in which the complaint was submitted: 2010, 2011, 2012, 2013, 2014 y 2015.
2. Complainant. Who files the complaint is one of the main variables analyzed in previous works (Armstrong & Ozanne, 1983; Harker, 2000; Medina & An, 2012; Sto & Glefjell, 1992; Wyckham, 1996) with the following attributes: (1) Company / competitor, (2) Consumer Association, (3) Administration, (4) Private Individual and (5) Cross Border, understood as a complaint in a country on an advertisement published or broadcasted in that country and which responsible advertiser is Spanish.
3. Type of offending advertiser. The nature or scope of market in which the advertiser (Wyckham, 1996) operates and therefore, where its products or services are sold and advertised has been considered as follows: (1) Multinational, (2) National and (3) Local

4. Media. Media through which an illicit advertisement has been broadcasted or published (Armstrong & Ozanne, 1983; Kerr & Moran, 2002; Medina & An, 2012; Sto & Glefjell, 1992; Wyckham, 1996): (1) TV, (2) Radio, (3) Print Media (newspapers, magazines, outdoors), (4) Internet (5) Packaging and Direct Marketing, (6) Miscellaneous (integrates two or more media of the above) and (7) Others (not included in the above attributes).
5. Legal infraction. The complaint refers to the presence or not of the violation of any Spanish legislative norm (Jones & Van Putten, 2008; Medina & An, 2012) analyzed, whether the general on advertising or the specific on products intended for health purposes.
6. Modality of the illicit. According to the LGP and the Act 29/2009 and previous studies (Muela-Molina & Perelló-Oliver, 2011; Muela-Molina & Perelló-Oliver, 2013), two types are established depending on the type of illicit advertising object of the complaint: (1) Misleading for the consumer and (2) Unfair with the competition.
7. Reason for complaint. This variable refers to illicit most frequently committed by advertisers when violating the law, particularly the Royal Decree 1907/1996, of 2 August, on advertising and sales promotion of products, activities or services with intended health purposes, Article 4 contains the prohibition of any advertising or direct or indirect, massive or in some cases individual promotion. Although previous studies have already been based on this regulation (Perelló-Oliver & Muela-Molina, 2011), this work has regrouped the types of illicit to make a more operational analysis: (1) Diseases (prevent, cure or treat diseases), (2) Slimming products, (3) Food (food supplements or with healing properties), (4) Performance enhancers (physical, mental, sports or sexual), (5) Effectiveness guarantee (ensuring relief or healing), (6) Natural (as a preventive or therapeutic feature), (7) Testimonials (health professionals, patients, famous, consumers), (8) Medications or health care substitutes, (9) Administrative control or technical/scientific support, (10) Sale in pharmacies.

8. Resolution of the complaint. According to previous studies (Armstrong & Ozanne, 1983; Medina & An, 2012; Wyckham, 1996) and the status of *Autocontrol* (2011), the measures to be taken by the advertising jury will include: (1) Dismissal (2) Rectification, (3) Withdrawal, (4) Warning and (5) Dissemination, when the case is particularly serious.

The study analyzed a total of 718 complaints accumulated over the six referred years. All of them are accessible on the website of *Autocontrol*. From the variables operationalized in the preceding paragraphs, we coded complaints in three successive independent rounds. This procedure allowed detecting possible errors, in any case associated with intersubjective perception of the coders since all the used variables are structural and are expressly included in the complaints studied. In the facts of each complaint are the data on the variables Year, Complainants and Media are explicit. The category concerning the Offending Advertiser was found by accessing the website of the advertiser itself. All the other variables related to the existence of Legal Infraction, Type of Illicit and Reason and Resolution of the Complaint were coded from the detailed information included on the section on ethical grounds of each and every one of the complaints. Therefore, it has not been necessary to resolve disputes arising from possible conflicting interpretations between the three participating researchers regarding the reliability of the coding process mechanisms.

## RESULTS

From the analysis of results and in response to RQ1, we can see the special role that Consumer Associations have to boost complaints in three of the four product categories studied; in particular, the Association of Communication Users (AUC). Table 1 shows that in Food products (56.1%), Beverages (58.3%) and Health (40.7%) most complaints are catalyzed by these entities. However, in the case of Beauty and Hygiene products (66.7%) the competing companies have filed more cases. At the other extreme, we can see the little relevance that public bodies have on the responsibility to promote this type of actions and play a more proactive role in defending citizens. Except for the case of the category

of Health (12.9%), the data shows that in the rest of advertising of healthy products, the public sector has little or no interest in promoting these complaints.

Table 1 also summarizes the profile of the offending advertiser, noting that multinational lead the ranking of complaints received in all the analyzed product categories, followed closely by national advertisers on specific health products.

From the point of view of the media used by advertisers, TV stands out as the one in which most advertising resources are invested in, which implies a greater likelihood of being subject to complaints. The category Miscellaneous, which integrates two or more media (television, radio, newspapers, magazines and outdoor, Internet, labeling and direct marketing), also highlights. The relatively high weight that the latter presents is related to the usual planning of advertisers to make media campaigns with one unified message in each media. However, it is worth noting the low relative weight that radio has in all complaints submitted in the four product categories studied.

As it has been proven in previous studies, although many campaigns associated with miracle products have on the radio their media of choice, there is still not sufficient monitoring by *Autocontrol*, although it is the media with the second largest audience in Spain, which is not very proactive in complaining illegal advertising. Also worth noting is the increasingly important presence of Internet with regard to these complaints. In this media, Beauty and Hygiene products (14.3%) and Health (12.9%) are the main protagonists of complaints.

In general, and in relation to RQ2, of the 323 cases studied concerning products that provide health benefits, 220 have some kind of legal infringement, representing more than 68% of the total. Disaggregating by product type, of the complaints associated with Food, 70.6% have some type of illicit, percentage amounting to 72.1% in the case of Health products. Meanwhile, Beverages and Beauty and Hygiene related products have the presence of some kind of illicit on 44.4% and 66.7% of cases, respectively.

Table 1. Complainant and offending advertiser, by type and product category (in absolute numbers and percentages).

		Food	Beverages	Beauty and hygiene	Health
Complainant	Company/ Competitor	22 38,6	6 16,7	14 66,7	31 22,1
	Consumers Association	32 56,1	21 58,3	5 23,8	57 40,7
	Public Administration	1 1,8	2 5,6	0 0	18 12,9
	Private individuals	22 17,5	7 19,4	2 9,5	34 24,3
	<i>Cross-border</i>	1 0,8	0 0	0 0	0 0
	Total	126 100,0	36 100,0	21 100,0	140 100,0
Offending Advertiser	Multinacional	77 61,1	22 61,1	18 85,7	69 49,3
	National	47 37,3	14 38,9	2 9,5	63 45,0
	Local	2 1,6	0 0	1 4,8	8 5,7
	Total	126 100,0	36 100,0	21 100,0	140 100,0

Source: Own elaboration.



Disaggregating for each of the years studied, it is observed that those legal infractions have a clear upward trend in the category of Health, passing from four offenses in 2010 to 36 in 2015. Other product figures remain more or less stable, despite some specific oscillation.

As noted above, the illegal advertising can take two forms: misleading and unfair. Table 2 summarizes the relative weight of each type of unlawful advertising by various types of health-related products within the set of complaints studied. From the analysis of the data we can see the prevalence of misleading advertising, which occurs when the lack of truth in the advertising message directly affects the consumer of the product based on potentially false promises. However, only in the category of Health the presence of advertising affecting other market players and, therefore, unfair to other competing brands, is superior. An example are those drug manufacturers that might complain a factual prejudice against the pseudo medications or healing products.

Disaggregating by advertiser category and type of product, the analysis of all complaints for false advertising notes that multinationals are accumulating more causes for this type of illicit in all categories of health-related products. Specifically, 60.7% of those on

Food, 75% of those related to Beverages, 88.2% of Beauty and Health and 50% of all products associated with health. From the perspective of the presence of unfair advertising, the complaints against multinationals remain majority on Food (51%), Beverages (75%) and Beauty and Hygiene (91.7%), while on the category of health products, national advertisers are the ones who incur more on this type of advertising (57.8%).

In this context, and advancing in the detailed analysis of the results, table 3 summarizes the presence of the reasons for each of the complaints filed against advertising and commercial promotion of products, activities or services with intended health purposes, disaggregated by year and by each of the four product categories studied.

In the case of food products, the majority of complaints (70) are motivated by the fact that the advertiser has sought to associate its product to alleged natural benefits for health unjustifiably. This motivation was particularly relevant in 2011, when 30% of the complaints was accumulated for this cause. In addition, there are 42 cases in which the advertiser does not even refer to administrative or scientific controls that mandatorily must prove these alleged benefits. The year 2011 is also the year in which more cases associated with these complaints are concentrated. We must remember

Table 2. Presence of unlawful advertising, by product category and year (in absolute numbers and percentages).

	2010		2011		2012		2013		2014		2015		Total	
	Mis.	Unf.	Mis.	Unf.	Mis.	Unf.	Mis.	Unf.	Mis.	Unf.	Mis.	Unf.	Mis.	Unf.
Food	15	4	25	7	13	3	13	9	10	10	13	18	89	51
	83,3	22,2	96,2	26,9	100,0	23,1	72,2	50,0	55,6	55,6	39,4	54,5	70,6	40,5
Beverages	5	3	2	0	3	1	3	0	2	3	1	1	16	8
	50,0	30,0	50,0	0	50,0	16,7	75,0	0	28,6	42,9	20,0	20,0	44,4	22,2
Beauty and hygiene	4	3	4	2	3	1	1	1	1	3	4	2	17	12
	100,0	75,0	100,0	50,0	100,0	33,3	50,0	50,0	33,3	100,0	80,0	40,0	81,0	57,1
Health	6	1	5	0	8	1	8	17	8	37	7	34	42	90
	60,0	10,0	100,0	0	72,7	9,1	38,1	81,0	17,8	82,2	14,6	70,8	30,0	64,3

Mis.: Misleading, Unf.: Unfair

Source: Own elaboration

Table 3. Presence of the reasons for health-related complaint by product category and year (in absolute numbers and percentages).

	2010			2011			2012			2013			2014			2015			Total						
	A	B	S	A	B	S	A	B	S	A	B	S	A	B	S	A	B	S	A	B	S				
Preventive / curative disease	3	0	0	8	0	0	6	0	0	3	0	0	9	2	1	4	0	1	4	0	1	33	2	50	
	9,1	0	0	24,2	0	0	18,2	0	0	9,1	0	0	27,3	100	50	12,1	0	50	12,1	0	50	100	100	100	
Stimulating product	3	0	0	1	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	5	0	1	
	60	0	0	20	0	100	0	0	0	200	0	0	0	0	0	0	0	0	0	0	0	100	0	100	
	3,7	0	0	3,7	0	3,7	0	0	0	29,6	0	0	0	0	0	0	0	0	0	0	0	29,6	0	100	
Beneficial foods	12	1	0	21	0	0	8	1	0	7	0	0	10	1	0	12	0	0	12	0	0	70	3	0	
	17,1	33,3	0	30	0	0	11,4	33,3	0	66,7	10	0	14,3	33,3	0	33,3	17,1	0	0	0	0	100	100	0	
Enhancers	1	0	0	3	0	0	0	0	1	3	2	0	4	2	1	5	0	0	5	0	0	16	4	2	
	6,3	0	0	18,8	0	0	0	0	7,5	18,8	50	0	25	50	50	40	31,3	0	0	0	0	100	100	100	
Guaranteed efficacy	2	0	2	8	0	3	6	0	2	3	2	0	9	2	1	31	7	0	0	1	26	35	4	9	
	5,7	0	22,2	22,9	0	33,3	0	17,1	0	22,2	5,2	8,6	50	0	16,9	25,7	50	11,1	40,3	20	0	11,1			
Natural and beneficial	2	0	0	7	0	1	1	0	0	2	2	0	4	2	1	10	6	0	0	0	10	22	4	2	
	9,1	0	0	31,8	0	50	0	4,5	0	0	3,4	9,1	50	0	20,7	18,2	50	50	34,5	27,3	0	34,5			
Testimonials	4	0	1	9	0	2	2	1	1	3	0	1	3	0	1	13	4	0	1	12	4	0	1		
	16	0	14,3	4,8	36	0	28,6	2,4	8	100	14,3	4,8	12	0	14,3	12	0	14,3	31	16	0	14,3			
Substitutes	0	0	0	6	0	0	4	0	0	4	1	0	11	8	1	29	5	0	0	22	5	0	0		
	0	0	0	1,5	25	0	0	16,7	0	0	6	4,2	0	0	16,4	33,3	100	100	43,3	20,8	0	32,8			
Admin. control/ Scientific backup	5	0	2	12	0	0	5	0	2	2	0	1	16	10	3	1	29	8	0	1	26	42	3		
	11,9	0	28,6	0	28,6	0	1,4	11,9	0	28,6	2,7	4,8	0	14,3	21,6	23,8	100	14,3	39,2	19	0	14,3			
Sold on pharmacies	0	0	0	1	0	0	1	0	0	3	0	0	3	0	0	1	12	0	0	0	0	0	8	0	2
	0	0	0	3,6	0	0	0	10,7	0	0	10,7	0	0	10,7	0	0	50	42,9	0	0	0	0	0	28,6	
	0	0	0	3,6	0	0	0	10,7	0	0	10,7	0	0	10,7	0	0	50	42,9	0	0	0	0	0	28,6	

A: Food; B: Beverages; H: Beauty and hygiene; S: Health.

Source: Own elaboration.



that each product may be subject to a complaint that incorporates more than one of these motivations.

Regarding Beverages, most of the complaints are motivated by the fact that advertisers attribute to their products enhancing properties of certain physical and intellectual faculties with a guarantee of effectiveness and completely healthy benefits. The years 2013 and 2014 are those that concentrate a greater percentage of these complaints that, in any case, are at relatively low levels compared to other products.

The abuse of the rhetoric promise to ensure a guaranteed efficiency is the main cause for complaint in the case of Beauty and Hygiene products, followed by the use of false testimonials intended to confirm the supposed benefits of the products advertised and the complete absence of administrative and accredited scientific controls. In this category, the weight of food products as a source of health benefits is obviously harmless.

Regarding the products of the Health category, it is noteworthy that it is the one with more complaints: 437 over the six years studied. Most of these are associated with an alleged guaranteed efficiency that does not exist. Similarly noteworthy is the absence of the mandatory administrative and scientific support that must back-up the benefits of this type of products. There are also complaints of these products listed as substitutes for drugs needed to cure certain diseases or conditions, or intended to replace the mandatory visit to the medical specialist. Especially significant is the fact that the complaints associated with these motivations related to the category of Health show a sustained upward trend until 2015, at which time it seems to break waiting to check in later studies if it is a punctual oscillation or a solid change in the sensitivity by advertisers to this type of problem.

From the detailed analysis of all complaints, the examples illustrating this casuistry are many for each of the modalities that the legislation declared as illicit practice. Especially alarming is the advertising of products that are closer to a drug –including dosage– and presented as a miracle cure, no longer for mild ailments but for serious illnesses such as:

Food supplement in orodispersible envelopes, strengthens and stimulates the immune system and fights infections (...). (*Resvis Forte*).

*Zenpure* is the first relaxing drink in Spain. A natural choice for any household member, as its natural ingredients help reduce nervous feeling.

3,000 year history of traditional Chinese medicine in each capsule. These are some of the properties that have been attributed to *Ganoderma*: adaptogen, anti-anxiety, anti-androgenic, anti-angiogenic, anti-bacterial, anti-aging, anti-spasmodic, anti-histamine, anti-inflammatory, antimutagenic, antioxidant, antithrombotic, antitumor, photoresist, lipid-lowering, immunomodulatory, sedative (...).

Regarding the allegedly slimming products, the vast majority guarantees the result in a short time, quickly and effortlessly, being usually women the audience target by advertisers:

Anti-cellulite slimming pants. Reduces cellulite and prevents its appearance. Get a soft, smooth, elastic, hydrated and flexible skin. Antioxidant effect that prevents skin aging (...). Get a flat stomach and reduce hips. (*Apple Skin*)

Do you know that weight gain is associated with poor intestinal flora? Lose weight and save your life (...). Reach your ideal weight and feel better. Restores the intestinal flora, reduces body fat, modulates appetite. (*Dieta y Más*)

From the point of view of the characters used to spread the advertising message, there is predominance of alleged patients providing testimony of the effectiveness of the product, while it is found that the most popular characters do not cooperate in this kind of campaigns. However, the participation of supposed experts in the field, as doctors who recommend and describe the product as if it were a recipe, is noteworthy:

[Dr. José Luis Vázquez]: It is an essential nutrient that prevents many diseases: skin, blood quality, blood pressure, prevention of thrombosis, triglycerides, cholesterol, sugar, platelet .... In pregnancy it is a practically inexcusable complement, because it ensures that pregnancy gets to term, that there is no premature delivery, prevents hypertension and postpartum depression and causes the baby to be born with greater length, head circumference, increased visual acuity, less likely to be hyperactive ... prevents glaucoma, high blood pressure. (*Más Omega Punto Rojo*)

The above example also serves the following regulated assumption, advertising of dietary supplements aimed at groups particularly sensitive such as women, the elderly –for their age, they have more physical problems– or children and young people, more vulnerable to persuasive messages as in the following examples:

It helps improving the quality of life of women and to find the physical, sexual and emotional (...) welfare. *Novawoman* relieves the most common symptoms caused by hormonal changes, such as hot flashes, irritability or lack of sleep. Also provides balance, well-being and energy to women during the day. Thanks to the action of its components it prevents sexual lack of appetite derived from female maturity. On sale in pharmacies.

The paradigm of this type of practice related to foods that are attributed with specific purported health benefits are dairy products and their derivatives. The nutritional properties intrinsic to these products are no longer enough. Manufacturers need to include other items to complete the product, that fulfill additional functions such as boost the immune system or slow osteoporosis among the most frequent cases.

The articular milk drink *Sportlife of Central Lechera Asturiana*, which reduces inflammation and joint discomfort (...).

Helps their physical and intellectual development [of children]. *Puleva Max*, energy and growth, smart nutrition.

Menopause comes to all of us women, and it is important that the calcium we take is not lost, so we trust the expert. *Densia* gives you 30% of the daily calcium and (...) helps maintaining your bone (...) density.

*Actimel* improves the response of influenza vaccine in the elderly (...), improves the immune response after vaccination (...). According to the Spanish Society of Medical Residents, Edad & Vida Foundation and the Pasteur Institute, the daily consumption of *Actimel* improves immune response following vaccination.

Another striking fact is the abuse of well-known personalities as presenters, journalists, actors, actresses

or celebrities that endorse many of these brands, strategically chosen depending on the age of the target audience. Similarly, different life stages –pregnancy, lactation, childhood and elder age– are the subject of advertising strategies in which many processed products are presented as the best alternative. For example, for children to grow up healthy and strong, when competent authorities have been warning for years of the consequences of the intake of these foods in the early onset of certain diseases or weight gain.

Also announced with great lightness are products that enhance the physical, mental or sexual performance without any supporting argument as required by the regulations. Also, the immediate effect and guarantee invite to consume the product. That same requirement to purchase and consume appears in most of the ads, many of which, instead of reporting on the ingredients and arguing on what basis or what makes possible its supposed benefits, simply say that their components are natural, contravening another regulatory principle in this matter. Examples of the two cases are:

*Cysticlean* is the natural product based on concentrated extract of American red cranberry that helps prevent cystitis and its symptoms. An envelope or capsule a day and goodbye to cystitis. *Cysticlean* is supported by clinical studies and is sold in pharmacies.

Purify your body (...), free yourself of toxins, naturally depurate. *BIO* concentrate of immediate effect. It helps to unclutter your body performing a deep cleansing of the liver, natural and effective. 2 times per year. Free yourself of what your body does not need and restore health and vitality. Effective cleaning. 100% natural food supplement. (*EPA Biodetox*)

Finally, there is no doubt that reporting the disposal of the product in pharmacies as a selling point provides added security and peace of mind to the consumer. It is precisely one of the reasons that the law does not permit advertising that these products are sold in pharmacies. However, in most cases, as shown by many examples drawn from the complaints studied, this argument is incorporated with absolute normality. This is evidence of laxity and lack of control on misleading advertising by self-regulatory bodies, as already shown by previous research.

Table 4. Resolutions and misleading advertising, by product category, type of resolution and year (totals and percentages).

	2010			2011			2012			2013			2014			2015			Total			
	Rej.	Rec.	Ces.	Rej.	Rec.	Ces.	Rej.	Rec.	Ces.	Rej.	Rec.	Ces.	Rej.	Rec.	Ces.	Rej.	Rec.	Ces.	Rej.	Rec.	Ces.	Total
Food	8	10	0	10	15	1	7	5	1	4	12	2	6	12	0	17	14	2	52	68	6	126
	44,4	55,6	0	38,5	57,7	3,8	53,8	38,5	7,7	22,2	66,7	11,1	33,3	66,7	0	51,5	42,4	6,1	41,3	54	4,8	100
Beverages	5	4	1	2	2	0	4	2	0	2	2	0	4	0	3	4	0	1	21	10	5	36
Beauty and hygiene	50	40	10	50	50	0	66,7	33,3	0	50	50	0	57,1	0	42,9	80	0	20	58,3	27,8	13,9	100
Beauty and hygiene	1	2	1	1	3	0	1	1	1	0	1	1	0	3	0	2	3	0	5	13	3	21
hygiene	25	50	25	25	75	0	33,3	33,3	33,3	0	50	50	0	100	0	40	60	0	23,8	61,9	14,3	100
Health	4	1	5	2	2	1	2	5	4	2	4	15	8	18	19	14	13	21	32	43	65	140
Health	40	10	50	40	40	20	18,2	45,5	36,4	9,5	19	71,4	17,8	40	42,2	29,2	27,1	43,8	22,9	30,7	46,4	100
Food	6	9	0	9	15	1	7	5	1	2	9	2	4	6	0	7	5	1	35	49	5	89
Food	40	60	0	36	60	4	53,8	38,5	7,7	15,4	69,2	15,4	40	60	0	53,8	38,5	7,7	39,3	55,1	5,6	100
Beverages	0	4	1	2	0	0	2	1	0	1	2	0	1	0	1	1	0	0	7	7	2	16
Beverages	0	80	20	100	0	0	66,7	33,3	0	33,3	66,7	0	50	0	50	100	0	0	43,8	43,8	12,5	100
Beauty and hygiene	1	2	1	1	3	0	1	1	1	0	1	0	0	1	0	2	2	0	5	10	2	17
hygiene	25	50	25	25	75	0	33,3	33,3	33,3	0	100	0	0	100	0	50	50	0	29,4	58,8	11,8	100
Health	2	0	4	2	2	1	1	4	3	0	3	5	1	5	2	3	2	2	9	16	17	42
Health	33,3	0	66,7	40	40	20	12,5	50	37,5	0	37,5	62,5	12,5	62,5	25	42,9	28,6	28,6	21,4	38,1	40,5	100

Rej.: rejection, Rec.: Rectification, Ces.: cessation.

Source: Own elaboration.

In this context, answering the RQ3 and from the 323 analyzed complaints concerning products that advertisers associate to alleged health purposes, table 4 summarizes the type of decisions taken by the Jury of Advertising, in the framework of the powers conferred by *Autocontrol*, as well as those relating only to misleading advertising.

The total percentage of Dismissals by the Jury of Advertising is notorious, especially on complaints on Food (41.3%) and Beverages (58.3%). Resolutions requiring Rectification by advertisers reach almost 62% in the case of Beauty and Hygiene products and 54% in the case of food products. However, regarding the category of Health, the kind of resolution that has more relative weight is cessation or Withdrawal of the advertisement, with 46.4% of cases. Throughout the 323 cases analyzed we did not detect any resolution that opted for Warning or Dissemination, which is why, despite being typified these modalities are not shown in table 4. Similarly, it is important to note that especially regarding the category of Health, the number of resolutions presents a clear upward trend in both Rectifications and Dismissals.

That profile in the distribution of the different relative weights in the types of resolutions distributed by product category is maintained when the analysis is related only to misleading advertising practices, as reflected in table 4. The categories Food (55, 1%) and Beauty and Hygiene (58.8%) have the larger number of rectifications, while resolutions requiring the Withdrawal of ads for misleading advertising are majority in the category Health products (50.5%).

## DISCUSSION

This work provides a “one to one” analysis of all the complaints handled by *Autocontrol* throughout the period 2010-2015 regarding the advertising of health-related products. The special role played by consumer associations in preserving the interests of consumers with regard to the strategies that many advertisers use to target audiences has been proved. However, the low participation of individuals in defense of their own interests is noteworthy. This is a consequence of two factors: (1) lack of awareness campaigns by public authorities and *Autocontrol*, as

suggested by the European framework in favor of the effectiveness of the self-regulation system and (2) lack of a culture and awareness of the Spanish population in advertising and their rights as consumers. In many cases, companies, whether national or international, and using any media within their reach, incur in legal infractions that, in the case of the studied products, may even endanger health.

These illicit, according to LGP and the Act 29/2009, takes the form of misleading advertising when the injured party is the consumer and of unfair advertising when the competition has its market interests damaged. The presence of this type of advertising on the studied products is really significant in relation to the set of all complaints to which the investigation period refers.

The study has identified the reasons that prompted the complaints relating to products with implications for the consumer's health. Thus, the quantitative and qualitative evidence, as noted, are unquestionable. In the case of healthy products, the final reflection of this work should focus more on the assessment of the fact that *Autocontrol* does not seem to be able to avoid the continuing abuses of many repeat offenders over the years, that have accumulated repeated complaints.

It is evident that there is no perfect model of monitoring and tracking of the advertising content that preserves the rights of consumers with perfect efficiency and effectiveness. Among the purely judicial model and the one based on the control of the public sector, emerges the one based on the principle of self-regulation that, in principle, aims to involve all key actors to ensure the credibility of advertisers, media and the security of consumers.

This paper contrasts again the important weaknesses in the Spanish system of advertising self-regulation (Muela-Molina & Perelló-Oliver, 2014). Health is the category that accumulates the highest percentage of ceased advertising; the number of products that, despite continued complaints received every year by *Autocontrol* –as has been shown in this investigation– and the commitment of advertisers regarding the withdrawal of the ad complained, is notorious, making that commitment meaningless. Without any financial penalty, it is not a punishment

for the advertiser to withdraw an illicit advertisement and issue another with similar content, but changing the characters or the situational context (Perelló-Oliver and Muela-Molina, 2011, p. 405). Another fact found is that most offending advertisers only operate nationally. This is an added evidence of the possible ineffectiveness of the system that regulates this advertising, because the companies offering these products are usually fly-by-night firms, directing their offer to people prone to deception, encouraging them with low prices and constant repetitions of their benefits (Peiró Abásolo, 2006).

In-depth study of this problem should contribute to improving the legal and regulatory framework, the judicial system and the self-regulatory associations to progress towards a more truthful advertising and increased consumer protection. If one of the main advantages of the system of self-regulation is that resolutions are resolved more quickly compared to the judicial model, the main argument against is “that it is relatively ineffective, because the incentives to comply are insufficient, breaches of the self-regulatory framework are common, and the penalties for infringements are relatively small” (Brennan et al., 2008, p. 59).

The assessment protocol and supposed sanction of advertising content must be more effective. As has been established, ads declared illicit continue to be broadcasted with impunity. It therefore seems imperative that *Autocontrol* acts or is forced to act on its own against these practices without a complaint by another competitor advertiser or consumer.

To this end, we suggest that *Autocontrol* implements the Monitoring Compliance like its counterpart in the United Kingdom (ASA) and the system of pre-clearance, i.e., that all advertising on radio and television should be evaluated before its broadcasted by an independent body that monitors the compliance with legislation to prevent that an advertisement already sanctioned can be issued. This would minimize the numerous occasions that sanctioned advertising continues to be advertised repeatedly without penalty.

In this sense, it should be remembered that it is necessary that all legal stakeholders involved in the development and transmission of advertising comply with the law. Article 7.2 of the analyzed

regulation states that “advertising agencies, newspapers, magazines, radio and television and other media will not accept advertising that violates the provisions of this Royal Decree.” Therefore, the media are also directly responsible for the illicit advertising that reaches the target audience if they do not control, monitor or reject ads claimed or potentially unlawful. The damage caused not only affects their captive audience, but also the credibility of the media, so that they too must assume that social responsibility.

In fact, that article 7, point 3, recalls that “when health authorities consider that certain advertising or commercial promotion does not comply with the provisions of this Royal Decree they can formulate, with immediate effect, a warning through media”. Here we also find a great passivity by the Ministry of Health, Social Policy and Equality of the Government of Spain. More proactive control and more persuasive sanctions would result in the quality of advertising of health-related products and the safety of consumers.

This research continues a line already initiated in previous works, but in this case focuses on the advertising of products that supposedly provide health benefits. At the same time, the weaknesses of the legal and self-regulating system exposes gaps and questions that certainly will have to be answered in future research. Thus, it would be desirable to complement these results with other studies that investigate the Spanish population regarding their knowledge of self-regulatory systems, the process for filing a complaint and the advertising nature to detect illicit infringing their rights as consumers and demand their defense. This would help the relevant agencies identifying gaps or deficiencies, or reinforcing information campaigns to promote education and awareness in this area. It would also be important to investigate the nature of the manufacturing companies, their distribution mechanisms and the administrative control required to promote these clearly fraudulent and, in some cases, harmful products. The main objective would be to obtain information on the mechanisms that fail in the administration and allow potentially harmful products to reach the consumer so easily.

It would also be necessary to analyze the existence of administrative protocols to identify the operational constraints faced by public bodies and resulting in the passivity that this research has found. Finally, the systems of control and monitoring implemented in Autoncontrol and in the media for testing,

surveillance and monitoring of illegal advertising should be deepened. These methodologies would prevent many fraudulent ads to be issued, thus minimizing the potential economic harm to the advertiser and the consequent improvement in terms of consumer protection.

#### FOOTNOTES

1. "La práctica es susceptible de procesamiento, ya que crea una probabilidad razonable de que los consumidores comprarán o utilizarán el servicio o producto en detrimento de su economía o cuerpo".
2. "Que es relativamente ineficaz, porque los incentivos para cumplir son insuficientes, las violaciones del marco de autorregulación son comunes, y las sanciones para las infracciones son relativamente pequeñas".

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