

The Role of Advertisements in Protection of Consumer's Right of Choice

Pari Khaledi Doborji¹ & Abbas Qasemi Hamed²

¹ Department of Private Law, College of Law and Political Sciences, Sciences and Research Branch of Tehran, Islamic Azad University, Tehran, Iran

² Department of Law, College of Law, Shahid Beheshti University, Tehran, Iran

Correspondence: Abbas Qasemi Hamed, Department of Law, College of Law, Shahid Beheshti University, Tehran, Iran. E-mail: Dr.gh.hamed@gmail.com

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Abstract

Consumer's right of choice is the most important one of his rights. Protecting it during the period before conclusion of contract can predispose the creation of a stable legal relationship which is in conformity with the real will and purpose of the consumer. Category of advertisement is one of the most important factors that have a strong impact on the consumer's choice. True advertisements which are in conformity with realities make the consumers evaluate selection options for purchasing or using the advertised goods or services and decide according to it and without spending time and cost. However, untrue advertisements will have a reverse role with reflection of untrue affairs. Therefore, the role of advertisements and its effectiveness on consumer's right of choice are from the undeniable realities. That is why the organization of advertisements affair to protect Consumer's right of choice is a necessity that different legal systems have responded to it. In this research, the legal systems of Iran and Britain have been studied in a descriptive and comparative method. So that a step to be taken to remove legal defects and deficiencies while recognizing the legal status and consumer protective tools in Iran law.

Keywords: right of choice, consumer, advertisements, untrue advertisements

1. Introduction

Since the consumption always complements the chain of production, it is production power index and the condition of survival of the production units (Aqababaei, 2009: 182). Therefore, it is considered from the indices of economic development. Typically, it requires normal enjoyment consistent with normal needs of today's social life. (Kleh, 1998: 245)

After the Industrial Revolution, changes in production tools in one hand changed the conditions existing in the domain of the relationships between manufacturer and supplier and on the other hand, the relationships between the manufacturer consumer; So that a new relationship was made which had certain structures different from the previous relationship. The necessity for legislation of laws related to the protection of consumers was posed in topics such as: Enjoyment of the right of security, the right to have information and the right of choice in the new relationship with the advent of great and enormous companies, complexity of goods, extensive advertisements, use of various brands and trademarks, and concluded contracts between the parties. Today, manufacturers and suppliers of goods and services apply various methods to advertise their goods to provide sales and attract more consumers. This has a significant impact on the consumer's choice. Therefore, the necessity of a comprehensive and efficient legal system to organize this domain is strongly felt. In this paper, in one chapter we will investigate the concept of advertisements and untrue advertisements, and in the two next chapters, the positions of legal system of Iran and Britain on advertisements and consumer's rights.

2. Literature Review

Several books and articles have been published in field of consumer's right and supporting the consumer's right. Despite the studies in last decade on the consumer's right, the role of advertisement in consumer's right of choice has not been examined. Some of the studies conducted include:

- McKenna, P, Mark, "A consumer Decision-Making theory of Trademark law", Virginia law Review, vol 98, 2012.
- History of Advertising ,the Ins, Eneyclopedia of communications, oxford university Press, 1990.

3. Concepts

3.1 Advertisements

In general, in definition of advertisements, it has been said: it is the set of activities which are performed for creating protection for or opposition to something or someone (Sadri, 2003: 345).

In other definition: advertisements are the efforts in the preparation and diffusion of advertisements with the aim of showing the positive consumption of a good (Qazi Zadeh, 2002: 141). According to one of the researchers, the advertisement means the technique of impressing the human action by the manipulation in his ideas and beliefs, but commercial advertisements mean to inform, message and making the probable customers aware of a good or service about attributes and characteristics of that good or service and effectiveness of his decision-making process so that it encourages him to buy that good or use that certain service. (Bolourian, 1997: 9)

Without the need of the historical documentations, it can be guessed that what is called commercial advertisement today, it has a background as long as the history of humans' social life and the appearance of trade among them. At the time of barter to good that individuals gave what they had in an extra amount from their need, and in return, they took what they want, they forced that "advertising" what they have for the others and persuading them about the attributes and benefits of that good.

This action "encourages" the others to request the demand of that good and they are "convinced" that with giving additional goods, they can gain their required goods. Some of the archaeologists found the traditional inscriptions to Greek or Egyptian language and after many attempts for that's translation, they found that these writings are nothing more than an advertisement for attracting the customers for the selling a good or nightly stay in the specific caravanserai (Kalhor, 2002: 44).

3.2 Untrue Advertisement

In general, it can be said that the untrue advertisement is the advertisement containing false information which leads to the mistake and cheating the consumer of good or service. Untrue advertisement may directly target the commercial competitors or goods and the provided services.

Also, not mentioning of some of the important points from the basic attributes of the goods or services and focusing on the other attributes that lead to different interpretations or mental commotion of consumer are the untrue advertisements. This case usually takes the ability and free choice from the customer. Untrue advertisement is considered as the violation and deranging in the consumer rights; it provides the field of a cunning and illegitimate competition. The criteria for fixation of the untrue advertisement can be expressed in the following order:

Deceptive and untrue advertisements, unreal relationship between image and expression in advertisements, lack of clarification of important elements in advertisements, the way of presentation and advertisements' content that are the causes of disorientation and choose commotion, and customers' correct decisions and also the existence of deception element or chance of that in the provided advertisements are from the criteria that are used in fixation of impermissible advertisements.

Also items such as exaggeration in description and definition, comparison of goods or services with the others goods and other services, disclosure of the name, signs or one of the reference characteristics of the owner of the other goods or services, expression of wealth superiority or own services for competitors' wealth or services, using the name, signs, commercial licenses or quality certificates belonged to another or unreal companies are the cases considered as issues of untrue advertisements (Maqami Nia, 2006: 118).

4. Investigation of Legal System of Iran

Vulnerability of consumer and being under the influence of his choice right against the advertisements have led to appearance of protective motivations from audiences of commercial advertisements. In classical regulations of Iran, although the title of untrue advertisements is not seen, but giving false information and deceiving the customer have been inhibited and entitled as the right of misrepresentation; and it gives the deceived party the right of revoking the contract. Besides, in the newly passed special rules, this issue has been clearly said because of the importance of advertisements and necessity of consumer protection towards providing untrue advertisements.

1) Consumer protection Act: in the Article 7 of this Act, it has been restated that the untrue advertisements and providing false information that leads to deceiving or confusing consumers are prohibited in the public communicative tools, mass media and advertisement pages.

According to the note of this paper of executive regulation, this Article will be approved by the commercial ministry with collaboration of the Ministry of Culture and Islamic Guidance and the Council of Ministers.

2) Executive Regulation of Article 7 of Consumer Protection Act: According to this Regulation, any advertisement that contains inaccurate information which leads to the deception or mistake of consumer of goods and services is untrue.

The following cases in the Article 2 of Regulation are considered as untrue advertisements and inaccurate information:

- Use of illusory subjects and untruthful and unprovable claims.
- Committing or omission of an act which leads to confusing or deceiving the audience in terms of quantity or quality.
- Advertisement beyond the reality of the desired good or services.
- Using the absolute and hyperbolic attributes such as completely hygienic and 100 percent guaranteed information.
- Lack of provision of accurate, correct, and clear information about goods and services.
- Blazoning the others' goods or services invaluable or invalid.
- Citing to the expired confirmations or the ones which are not valid for any reason.
- Imitating the structure, text, slogans, pictures, songs and other commercial advertisement similarities of products that deceive the consumer and lead to his/her obliquity.
- Using the names, titles and signs of the famous individuals and institutions in order to deceive the consumer.
- Citing to the certificate, trophy and issued certification from official centers approved by competent authorities, beyond their exact text.
- Any declaration or presentation of false information in the commitment pages or guarantees of good and services.
- Advertisement of goods and services that are announced illegal by the relevant systems based on their legal authorities and tasks.
- Advertisement of goods or services without a license that are required to have license based on laws and regulations of production and presentation and distribution of them.
- Citing to the external sources and resources in advertisement of the internal products without confirmation of the competent authorities.
- The lack of specifying identity of the person or agency favored by the advertisement except from that part of advertisement that is led to the original advertisement and only is published for attracting attention of audiences (Pending Advertisement).
- Instrumental use of women, men and children which plays the main role in the introduction of good and services¹.

In the Article 3 of the Regulation, customer and builder of advertisement are responsible for untrue advertisement.

3) Electronic Trade Act: In the second chapter of the Electronic Trade Act entitled "Advertisement Rules" in Article 50, it is mentioned that suppliers should not commit an act or omission that confuses or deceives the audience in terms of quantity and quality in advertising their goods and services.

In Article 52 of the same law, it is mentioned that the supplier should advertise in a way that the consumer understands accurately, correctly and clearly the information related to the goods and services.

It is stipulated in Article 53: identity of the person or agency favored by the advertisements must be clear and explicit in advertisements and marketing.

¹ Executive Regulations of Article 7 law of Consumer Protection enacted / 91

It is stated in Article 54 of the same law: suppliers should not abuse special features of transactions in electronic method to hide the truths related to their identity or the place of their business.

Also, according to the Articles 56 and 57 of this law, suppliers should consider arrangements on receiving advertisements to postal address or e-mail of consumers. They should also act according to the professional procedure in their advertisements.

Sanction of violation of the above tasks has been determined in chapter of crimes and punishments (Article 70) as follows: suppliers who violate Articles 50, 51, 52, 53, 54, 55 will be sentenced to penalty from twenty million rials to one hundred million rials.

4) Guild System Act: Note 2, Article 17 of Guild System Act approved on 25.02.2013 stipulates: guild people are not allowed to untruly advertise about products, goods or services in order to attract customers. Otherwise, they will be treated according to the Article 68 of this law.

According to article 68 of this law, Violation from the Article 17 and its notes is considered as violation and the offender is sentenced to pay cash fine of two million rials at the first time and five million rials at the second time and ten million rials at the third time and the next times.

5) Regulation of the establishment and supervision of the way of work and activity of advertising associations: In Article 12 of this Regulation, posing misleading contents and inclusion of improvable claims, as well as contempt and derision of the others (implicitly or explicitly) have been prohibited.

6) Instruction of providing TV and Radio advertisements: Principles 9, 11, 12, 13 and 14 of this instruction have banned the following cases to avoid unhealthy competition and audience deception:

- Advertisements that are beyond the reality and contain deception.
- Exaggerated advertisements.
- Advertisements that use unconditional-making and exaggerative traits.
- Advertisements that utilize detailed and excellent traits explicitly or implicitly.
- Advertisements that intend to mislead and deceive the consumer by technical arrangements.

In addition to the sanctions stipulated in specific laws, general sanctions can be also understood from the legal rules which include:

Void or revocation of the contract: commercial advertisements and heavy costs that are paid for it aim to encourage the customer and make more revenue.

One of the best sanctions is that a transaction based on untrue advertisements is voided if impairs the customer intention. He is given the right of revocation if it causes his mistake and deception in secondary properties of the traded case.

- **Payment of compensation:** if the void of the transaction is not enough in order to return the status of the hurt one to the previous form, he can claim compensation before the court. The court also sentences the one who is responsible for the incurred losses (owner of the goods or the responsible of advertisements) to pay compensation under the following conditions:

- Incurrence of the certain and definite loss.
- Incurrence of loss is directly and immediately due to the untrue advertisements.
- Incurred loss has not been compensated through other ways. (Ismaeili, 1998: 5)
- Spiritual damages are considered as one of the new issues that accidentally are happened majorly as the result of the commercial advertisements. Some types of spiritual damages have been also mentioned in Iran's Law in Regulation of Establishment and Supervision of the way of work and activity of advertisement associations, it includes:
 - Advertisements should not blazon the services or goods of others to invaluable or invalid.
 - Disdaining and ridiculing the others is implicitly or explicitly prohibited in advertisements.²

5. Britain Law

Since 1962, the Advertising Standard Authority (ASA) in the UK has undertaken the duty of supervising the advertisement affairs, particularly observance of the set of laws of the UK in British codes of Advertising and

² Article 12, Paragraph c of the Regulation

sales promotion (BCASP).

This Authority has undertaken the permanent supervision of the performance of advertisements in radio and television and the other media to eliminate the defects caused by inadequacy in the way of performance of self-supervision system that was given to printed media advertising.

The most important issues that the legislator prohibits advertisers to do them to protect the rights of children and are unfortunately ignored in some cases include the following cases:

- Creating motivation and desire in children for goods and services which they are not able to buy or use them.
- Encouraging children to force their parents to buy goods or products advertised in advertisements.
- Showing children in dangerous and insecure status in advertisements which makes children to imitate and follow it.
- Creating a sense of inability and contempt, especially in a situation where the child cannot buy the advertised goods or services.
- Showing children in forms of instrumental, gendered, commercial use or wearing them by costly and luxurious dresses and the use of cosmetics.
- Advertising alcohol drinks, tobacco and fattening foodstuffs, such as the different types of chocolate for children.

Advertising Standard Authority has totally received 13784 complaints against the media in various advertising issues in 2002. About 1827 cases of this number are related to children advertisements. 29 complaints among these have been confirmed and accepted by this Authority.³

There are also advertisement rules about foodstuffs, hygiene goods and issues of health and cleanliness in the UK. There are also prohibitions on advertising alcoholic beverages and drug and slimming products playtime (Independent Television Commission (ITC), Advertisements Rules for Children, 1997)

Generally the UK has the highest legal Articles in the three issues of children protection, health and hygiene healthy competition. Discrediting the other goods and services has been also prohibited at the sector of fair advertisements. Thus, advertisements' content should fairly observe principles of competition, as well as advertisements that cause misleading, deception, and priority of goods toward other goods by applying new production technologies. The law has specified instances in these cases. (Rasouli, 2010: 49)

As it was already mentioned, there are two acts on advertisements in the British legal system, which are CAP (Committee of Advertising Practice) and BCAP (Broadcast Committee Advertising Practice).

A chapter has been allocated to the misleading or untrue advertisements in Broadcast Committee Advertising Practice.

True and complete advertisements in this law are advertisements consisted of basic information including:

- Main features of goods or services
- Identity and residence of the manufacturer
- Price which includes taxes or the original price of goods or services.
- Responsibilities related to goods delivery.
- Arrangements for payment, delivery, performance or complaint
- Consumers' rights for withdrawal or revocation right⁴

There are specific rules in the field of advertisements on products such as alcohol, hygiene goods and cosmetic products, economic and recruitment services.

According to the rules of CAP and BCAP, the main policy of misleading advertisements in Britain's legal system includes:

- Advertisements should not be essentially misleading and deceptive.

³ Available at: <http://www.asa.org.uk>

⁴ Advertising Regulation: Overview of practices in Singapore, china, the UK and the USA, Briefing Note, prepared by Andrew E. My burgh, August 2009.

- Advertisements should not mislead consumers by not providing basic information or hiding basic information or vague, indistinct and irregular provision of the information.
- Advertisements should not be misleading by hiding the identity of sum.
- Advertisements should not incorrectly imply that the sum itself plays role as consumer to purposes other than trade or its profession.
- Advertisements should not use very brief periodic images or any other techniques that likely affect consumers without fully making aware them.
- Advertisements should not mislead consumers on market conditions or the possibility of finding the goods or service elsewhere to force consumers to buy the goods or service in another place under conditions lower than the favorable and desired conditions with normal conditions of the market.
- Advertisements should not make a disorientation between the sum and its competitors, or disorientation between the trademarks, brands or other distinguishing marks of goods and services from competitor.
- Advertisements should not mislead consumers about the goods' manufacturers.
- Advertisements should not discredit and defame the other goods, services, or advertisements of trademarks or any distinguishing brand.
- Advertisements should not introduce fake and duplicate goods or services with supported trademark or brand.
- Advertisements should not use the word guarantee in a way that causes confusion and disorientation about the rights of consumers.
- Advertisements should not mislead consumers by not providing information about the geographical or age restrictions.
- Advertisements should not falsely state that a commodity or service or condition which is suggested is only available for a limited time and as a result limit consumers' time or opportunity for an informed choice.
- Obvious exaggerations and claims that a middle consumer can recognize it are not fundamentally misleading.
- Regulations on specific goods or audiences have been enacted in the other chapters of this law that intend to protect consumers against misleading advertisements.

For example, some parts on the children and some parts on drugs are from this category.

False or untrue advertisements may take place in two forms: positive misrepresentation and incomplete truth which is associated with the non-disclosure of information and effective hiding of non-disclosed information.⁵ Any non-disclosure of information is not merely considered as misrepresentation; but it is considered misrepresentation in cases that the dominant tradition considers it as untrue statement.

This is because it may be interpreted from the silence that there is nothing important to say (Waddams, 1990: 349). Sometimes the party creates a positive misrepresentation or half-true reality, and sometimes it has a fraudulent silence (Krawiec and Khatyron, 2005: 1825).

The major part of complaints is related to misleading advertisements in UK. About 50% of complaints are sued by traders and the rest by consumers. It takes three month to end up a free and middle suit. Judgment and arbitration is conducted by a council whose members are independent from the advertisements industry (2 of 3) and an expert of advertisements industry (1 of 3).

There are two formal and informal strategies to settle the posed claims. The informal strategy or the same compromise is used when the present sum is for compensation or removal of damage. When an offense takes place, the committee expects advertisers to change their advertisements according to the law as soon as possible.⁶

Penalties for untrue advertisements in UK includes cases such as wide notice, request of correcting the reported faults, shortening the advertisements time, determination or revocation of broadcasting license as well as imposition of financial fines (Rasouli, 2010: 49).

This issue is mainly for radio - television advertisements that are subject to specific regulations and restrictions.

⁵ Purchasers duty to disclose under securities and exchange, Annual report of the securities and exchange commission, Washington Law Review ,1956,p.63, Available at :<http://www.jstor.org/stable/120086>

⁶ The BCAP code, The UK code of Broad cast Advertising, Edition 1, and P.13-22.

Printed media are not subject to legal predicted restrictions (Ranjbar, 2008: 4).

Press mainly follows the public rules and regulations and self-regulatory system of press industry in terms of content. Therefore, media industry supervises press activities by creating special institutions such as Press Complaints Commission and Advertising Standard Authority.

Supervision of the work of radio - television advertisements in UK are subject to specific regulations that are applied by legal institutions such as Independent Television commission and / or Radio Authority or Advertising Standard Authority regardless of the general rules. Complainants can proceed through submitting their complaint to the relevant authorities according to the regulations.

According to the existing reports, there are also cash fines in case of introducing the offenders. Compensation of the probable damage and eliminating its adverse effects are the common points of the rules related to violations in advertisements (Rasouli, *ibid*: 57).

Instruction of No. 450/84 dated 1984⁷, amended by instruction No. 55/97 dated 1977 about equalization of administrative rights and regulations and criteria of the member states on misleading and deceptive advertisements has been also approved in this field in Europe Union.⁸

6. Conclusion

Consumer rights protection is an inevitable necessity in the complicated system of production and distribution, as well as broad and diverse consumption market. Among the different rights that are supposed for consumer, the right of choice is from the most important rights which can also predispose correct enforcement and implementation of the other rights of the consumer.

Protecting Consumer's right of choice before concluding the contract can lead to a correct decision-making, and also it can create a favorable and stable contract and prevent from spending costs caused by the termination and abolition of the contract, and consequently, the costs of the suits related to the disputes resulting from it. Goods and services advertisements are one of the most important factors that have an impact on the consumer's right of choice. Advertisements play a significant role in consumer decisions in today's world. Hence, they should be systematic in order to create information for consumer. They should transfer accurate information to the consumer in conformity with the reality. Also, effective and efficient sanctions should be enacted on sharp untrue advertisements in order to protect from the consumer.

The subject of misrepresentation perhaps can be posed in Iran's classical legal system in order to protect the consumer who has encountered with untrue statements. In addition, in this regard, the deficiency of a codified and comprehensive law is quite tangible in the newly approved regulations in spite of some specific regulations which have taken steps to systemize the affair of advertisements with lodgment of consumer protection.

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⁷ Council Directive 84/450/EEC of 70 September 1984 Relating to the Approximation of the laws, Regulations and Administrative Provisions of the Member states concerning Misleading Advertising so as to Include comparative Advertising, available at :www.eur-lex.europa.eu

⁸ Directive 97/55/Eco European Parliament and of the Council of 6 October 1997 Amending Directive 84/450/EEC concerning Misleading Advertising so as to Include comparative Advertising ,available at :www.eur-lex.europa.eu

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