

Consumer Protection Mechanisms from Misleading Electronic Advertising in Light of Algerian Legislation

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Abstract---Advertising is an important tool in identifying the characteristics and features of products, attracting the attention of consumers, creating their desire, and directing their will to choose a specific product over competing products. However, advertisers often resort to misleading advertising that focuses on one or more elements of the product being advertised. This practice has become increasingly dangerous, especially with the digital transformation we are witnessing. This poses a serious threat to the interests of consumers. Therefore, it was imperative for the Algerian legislator to surround this practice with legal controls in order to regulate it and prevent it from being practiced in an unauthorized manner, to avoid violations and provide legal protection for consumers from misleading advertising.

Keywords---Consumer Protection, Misleading Advertising, Electronic Advertising, Algerian Legislation.

Introduction

Promotional activity is considered one of the most important means by which organizations promote their products, especially since consumers are faced with a large number of competing products, which makes them need a guide and encouragement to purchase the product. Therefore, organizations attach importance to Promotional activity is of utmost importance, one of the most important means of which is advertising, which has become, without a doubt, one of the most important mechanisms of commercial activity in competition and profit-making. There is no way for the production process to succeed without marketing.

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The importance of advertising has increased in light of the rapid technological transformation that has led to the creation of a digital business environment and the transformation of commercial transactions of a physical nature into digital transactions. This has led to the emergence of a new type of advertising known as electronic or digital advertising, as it has become possible for any institution to market its products by employing various digital platforms. Exploiting their advantage of sending advertising messages at a low cost to the largest possible number of consumers.

Given the large and growing number of users of these platforms, they act as a link between them and electronic consumers. What the latter need is information enlightenment, i.e., providing them with all the data and information related to the product, which represents their protection.

Although electronic advertising is considered a form of marketing and promotion and a tool for informing the public about goods and services offered in virtual markets, given its commercial importance on the one hand and its danger if it contains lies on the other hand, some advertisements have negatively affected consumers' ability to obtain accurate information, transforming them from a means of informing consumers into a means of misleading and deceiving. Consumer protection is a top priority in all electronic transactions, especially those related to commercial advertisements received through virtual space. National and international legislation, including the Algerian legislator, has resorted to enacting legal texts regulating electronic commercial advertisements, setting strict penalties and criminal responsibilities for violations.

Based on the above, what are the mechanisms for protecting consumers from misleading electronic advertising in Algerian legislation?

First, an introduction to concepts:

The concept of advertising: It is defined as "a set of non-personal efforts aimed at directing the attention of members of society to a specific commodity or service, urging them to purchase or request it." Or it is the various types of activities through which visual or audio advertising messages are published or broadcast to members of society with the aim of urging them to purchase the advertised product or service. (Kashkoush,1998,p.07)

Article 2 of Executive Decree No. 39/90 on Quality Assurance and Anti-Fraud defines it as "all suggestions, advertisements, statements, announcements, publications, or instructions designed to promote and market a specific product or service using visual or audiovisual support."(**Executive Decree No. 90/39 on Quality Assurance and Anti-Fraud, 1990, p. 203**).

Advertising is also defined under Article 3, Paragraph 3 of Law 02/04, which specifies the deadlines applicable to commercial practices, as "any advertisement that aims, directly or indirectly, to promote the sale of goods or services, regardless of the place or means of communication used."(**Law No. 04/02 defining the rules applicable to commercial practices, 2004, p. 4**).

Through this definition, it becomes clear to us that the Algerian legislator in the Commercial Practices Law did not specify the type of medium in which the advertisement is made, but rather came to include any place and any means of communication used, which indicates that the concept of advertising in the Commercial Practices Law also includes electronic commercial advertising. However, the legislator went on to give a special definition in Article 6 of the E-Commerce Law 05/18.

Electronic advertising: It is defined as "any action or behavior that aims to psychologically influence consumers, with the aim of informing them of the advantages of a product or service and the benefits it can provide, regardless of the means used, whether the means used is through the Internet or other means." (**Bouzkri, 2012-2013,p.09**)

Others defined it as "all forms of promotional offers provided by a specific advertiser through the Internet." (**Abu Qahf & Taha ,2006,p.341**)

Article 6 of Law No. 05/18 on electronic commerce stipulates that “electronic advertising is any advertisement that aims, directly or indirectly, to promote the sale of goods or services through electronic communications.”(Law No. 18/05 on electronic commerce, 2018, p. 5).

Misleading advertising: “Misleading is any action that leads to deceiving the other person and making him fall into error, to show something other than its reality.”(Dhikra,2012,p.2013)
A misleading advertisement is one that is likely to deceive the consumer, or could lead to that.
(Mansour,2019,p.163)

Therefore, misleading advertising is in the middle of the road between truthful advertising - which is a legitimate act - and false advertising - which is an illegitimate act. The difference between false advertising and misleading advertising is a difference in degree, not in nature.(Abdel Fadel ,1991,p.175)
The US Federal Trade Commission has concluded that the act of misleading or lying in online advertising is no different from the act and content of lying in traditional advertising media. Lying and misleading are the same, but they are carried out through a modern means, namely the Internet.
10(Touil,2019,p.66)

The Algerian legislator did not define misleading advertising and was content to mention its cases under Article 28 of Law 02/04, which specifies the deadlines applicable to commercial practices. For example, he mentioned three cases in which advertising is misleading:

-The advertisement must not include statements, information, or representations that could lead to misleading the identification of a product or service, its quantity, availability, or features.

-It must not include elements that could lead to confusion with another seller or with their products, services, or activity. It is related to a specific offer of goods or services, while the economic aid does not have a sufficient stock of those goods or cannot guarantee those services that must be provided usually with massive advertising." **(Law No. 04/02 defining the rules applicable to commercial practices, ibid., p. 6).**

Article 30 of Law No. 05/18 on E-Commerce stipulates that advertising conducted via electronic communications must be clearly defined as a commercial or advertising message. This means that the advertiser must be committed to clarity in the advertising he provides via electronic communications, and must specify its commercial or advertising nature. The legislator also emphasized the need to specify the advertisement and the person for whom the message was designed, which enables the electronic consumer to direct his will toward the right choice whenever he receives a clear and unambiguous electronic advertisement that clearly outlines the features of its offer, especially whether it includes discounts, rewards, or gifts. He also ensures that all the conditions required to benefit from the commercial offer are not misleading or ambiguous.

Electronic Consumer: Article 6 of Law 05/18 on Electronic Commerce defines an electronic consumer as any natural or legal person who receives, for compensation or free of charge, a good or service via electronic communications from an electronic supplier for the purpose of final use.**(Law No. 18/05 on commerce2018, p. 5).**

Second: Forms of deception in electronic advertising

1. Deception regarding the essence of products via the Internet

In the components of the product: The danger of misleading advertising in this case lies in what it includes in terms of a fundamental change in the product or service being advertised, which transforms the consumer's will into something of a different nature.

In the country of origin: Lies or misleading statements in commercial advertisements can be made about the origin or source of products and services, by attributing the advertised products to a specific country on the basis that they are the country of origin, while the opposite is true. In this context, what

the court ruled The French appealed against a French company's online advertising of edible oils using the slogan "Excellent olive oil, the flavor of Provence in our country," which suggested to consumers that the product was made in France, when in fact it was made in Spain and was not of the premium grade because it was mixed with a large percentage of sunflower oil.¹³(Touil,2019,p.67)

In advertising prices: The price is considered one of the important pieces of information and perhaps the first thing consumers seek to know before ordering a product or service. ¹⁴(Saeed,2016,p.193) Therefore, merchants and service providers sometimes seek to advertise low prices for goods and services that do not match the actual price offered to the public, which opens the door to misleading advertising practices in pricing. (Al-Jaf,2017,p.152) Illusory reductions are the most common forms of false advertising that threaten the will and course of the initiators

Purchase: Advertisers will use misleading advertising with some words in order to mislead the initiators With discounts or free products, with the aim of activating sales and increasing profits in discounts A successful way to lure buyers into buying, so they will exploit consumers' confusion to announce Incorrect reductions, so that those who start the fever will be surprised by this reduction, the illusion when paying the price that There are conditions for obtaining it, including the necessity of making products

In quantity: the quantity of what is declared by misleading those who begin through the public, which contains a quantity Or an orbit other than the orbit, or a dove for a good or service.

In the world of merchants: The world of merchants has become a tool for cheating and deceiving those who start it through It provides him with false information and information, after it was merely a tool for identifying products, goods and services Therefore, as an important source of knowledge duty, it facilitates the identification of goods And services.

Lying in image or sound: Lying in image or sound is like showing something advertised in an image A violation of the fever by relying on technological expansion in photography and modern sound wishes To attract users. In this context, Article 60 of Executive Decree 378/13 stipulates conditions and competencies Inform the initiators of the following: "It is forbidden to use any statement, indication, or any empty name, or any An extended gesture or method of advertising, displaying, marking or selling that would introduce confusion into the mind The initiators, the sky about nature, composition, basic type, orbit of basic elements, and swelling Consumption, date of production, date of solid limit of consumption, quantity, origin or source of the product". (Executive Decree No. 13/378 defining conditions and methods related to consumer information, 2013, p. 17).

2. Off-the-shelf misleading products via the Internet to set up misleading advertising

Electronization on one or more elements outside the same products and services It has a significant impact on the desire of those who start by obtaining the product or receiving the service. We mention:

Including:

Lying in the terms of the contract: In general, knowing the terms of the sale is a matter that is dealt with transparently Commercial practices, free competition and integrity, the Algerian legislator established that the seller is obligated Rather, concluding the sale process by informing the initiators by means of all the pure and reliable information It is defined as the product or service, the terms of sale, and even the limits set by the official equivalent of the currency of sale Or service. (Airzil,2016,p.77)

Lying in expected results: Such an element is the basic goal of equivalence, so the effect The result is the one that satisfies the need for which the camels begin to Equivalence, which is the principle promoted by advertising in Al-Hamma, so if the commodity does not protect you, the results The desired and announced advertisement was misleading.

Third: The pillars of the crime of misleading advertising: The crime of misleading advertising is formed just like most Crimes have a material and a moral component.

The material element of the crime of misleading advertising: represents the material element in commercial advertising Misleading, by the presence of misleading advertising, whether it is a means of expressing it, and by focusing the misleading on an element One of the elements of Article 28 of law 02/4, which specifies the dates applicable to commercial practices You are concerned with identifying the product, its quantity, its availability, or its features, in addition to the elements stipulated Accordingly, Article 68 of law 03/09, which states: "The quantity of products delivered, the products shall be delivered" The defective product is not defective, the product is not used, the date or period of validity of the product, the results Expected from the product and finally the methods of use and necessary precautions for the use of the product". (Sarawa Abadi,2011,p.219)

As for the criminal result, the Algerian legislator did not stipulate the crime of commercial advertising electronically Misleading is a result, but it is enough that the fact that commercial advertising is electronic would lead to Misguidance, which is what is inferred from the phrase "may lead to misguidance" mentioned in Article 28 (Bouhbal & Samar,2022,p.18)) of law02/04 specifying the dates applicable to trading practices, amended and supplemented.

The moral element of the crime of misleading advertising: It is supported by the moral element of the crime of commercial advertising The misleading electron provides the advertiser's bad faith in his misleading advertising behavior to repel deception or misguidance The public, and it is noted that the Algerian legislator did not require the presence of a moral element to be committed to this crime That is, the presence of the advertiser's bad faith or the tendency of his intention to mislead the electron initiators, and this is stated in Article 30 of law 05/18 relating to electronic trade or Article 28 of law RLM 02/04 specified For dates that affect commercial practices, and therefore it is considered a crime to advertise electronically Misleading crimes are material crimes that are completed as soon as their material element is gathered without the need to prove the source The crime is with the advertiser. (Kalem,2018,p.164)

This element has been raised by a number of patterns between the principle of excluding declared bad faith, and the obligation to provide Bad faith of the advertiser. The opinion of the mouth is that the crime of misleading advertising is considered a material crime palm Because it is merely an advertisement for a product or service, it is concerned with information and information that is not broken down with the public Another opinion was that the legislator's silence about requiring the moral element could be considered evidence It is sufficient to exclude the declared bad faith, and if the legislator had rejected humiliation, he would have explicitly stated humiliation. So neglect Or the palm error alone is the blame for misleading advertising. (Al-Mansouri,2015,p.233)

Fourth: The penalty for violating the controls related to practicing electronic advertising: Law 05/18 came Those involved in electronic commerce have contributed to regulating the field of commercial practices on the Internet This is for the protection of both electron suppliers and electron fishermen

And electronic consumers who are constantly and intensively exposed to a huge number of advertisements The electron that the initiators received without wanting to be humiliated, which led to the spread of electronic crimes Several in the commercial field, including the spread of misleading electronic advertising that is often sent. (Tala & Sellam,2021,p.206)

The Algerian legislator has specified for everyone who respects the dates regulating advertising or publicity: The electron, especially one that has been made deceptive or misleading by a group of factors, we find it an addition To doubt the cities concerned with compensation for the damage, he placed a penalty in the form of a fine Article 39 of this Law requires a fine of 50,000 DZD to 500,000 DZD for each supplier Electronically, he violated one of the obligations stipulated in Articles 11 and 12 of this law.

As Article 40 of the same law states: "Without prejudice to the rights of victims to compensation, the boxes Anyone who violates the provisions of Articles 30, 31, 32 and 34 shall be fined from 50,000 DZD to 500,000 DZD From this law".

Fine as a criminal penalty imposed for violating advertising provisions: The Algerian legislator considered it a violation The provisions learned in commercial advertising are a violation and criminal penalty ranks represented by the fine imposed Every electronic supplier who violates these provisions shall be subject to a fine ranging from:

50,000 DZD to 500,000 DZD. In the same context, the fine stipulated in Article 40 above could be doubled The case of repeating the verb within a period of 12 months from the learned turban in the previous crime as it is It is stipulated in Article 48 of law 05/18 relating to electronic trade. (berabah2022,,p.1566)

Consumer right to compensation: to protect users from misleading commercial advertising

The Algerian legislator guaranteed the victim of the violation committed by the advertiser, which led to his injury With damages, whether material or moral, the ruling is to file a lawsuit demanding compensation based on the provisions Article 124 of the Civil Code considers "every act, whether committed by a person by mistake or by reason of It happens by compensation, as the product sought to deceive the users The error is binding on whoever was the cause

Harmful It misleads him by highlighting one or more characteristics in the advertised good or service, and often This characteristic is essential for the one who begins it and the one who motivates it to be equal, then he appears to be in a state of humiliation, and he is considered to have committed Error borne by the official. Accordingly, the initiators will be able to file a claim for compensation for damages It was welded to it due to misleading advertising in front of the light. (Rebhi Teboub,2020,p.15)

The necessary here must prove the pillars of responsibility, which are cause, harm, and cause Between the act of electron advertising that violates the provisions of the law and the damage caused The initiator or recipient of the advertisement. As for what is related to the issue of extending compensation, it is a matter of extending it, and general promises have no basis in particular

Article 182 of the Algerian Civil Code states the following: "If compensation is not extended

In intention or in law, the past is the one that destroyed it, and compensation includes the loss suffered by the creditor and what He missed out on what he earned..."

In addition to what was mentioned, compensation in this case also includes what is stipulated in the promises General material damage and moral damage, which befell the initiator or recipient of the advertising message Violation of deadlines in the field of electronic commerce law. (berabah,2022,p.1566)

The Algerian legislator referred in Article 45 of law 05/18 to the case of the victim filing a lawsuit Cities to demand compensation for the damages they caused as a result of violating the provisions learned by advertising Electronically, by resorting to lighting, the dividing cities in the light, the cities that are educated by compensation In accordance with the general regulations in this regard, (Tala & Sellam,2021,p.205)

Conclusion

Based on what was presented throughout this research paper, it can be said that electronic advertising represents one of the prominent features of technological development that can influence consumer behavior. Advertisers may resort to using promotional methods that involve fraud and deception. It misleads and mentions specifications that are not identical to the advertised product or service. This may lead the consumer to contract for something that differs from their original expectations.

In light of the great risks posed by misleading electronic advertising, we find that the Algerian legislator enacted a set of legal and regulatory texts to provide, as much as possible, a number of guarantees to protect the consumer from the risks they face. to restore balance to the contractual relationship in the field of electronic commerce. Consumer protection from this type of advertising is not limited to the legal aspect alone, but also requires intensive awareness-raising efforts. The more the consumer is aware of his rights and the ways to identify misleading advertising, the greater his ability to defend himself.

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