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Consumer Protection from Misleading Electronic Advertising

حماية المستهلك من الإشهار الإلكتروني المضلل

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Abstract:
With the evolution and diversification of commerce channels driven by technological advancement, the use of advertisements for various products and services aimed at the consumer has become widespread. Although these electronic advertisements play an influential role in promoting goods and services and informing the consumer about the details of advertised products, they are increasingly being used by some suppliers and economic agents to achieve illicit objectives. This is accomplished by misleading the consumer with deceptive and incorrect information about the offered goods and services. This issue has become particularly acute now that communication technologies are accessible to everyone, coupled with the complete absence of specific legislation to regulate these advertisements in a precise and sound manner.Consequently, the consumer finds themselves caught between believing the claims promoted by electronic commercial advertisements and discerning the boundary between what is reasonable and what is exaggerated. The potential for negative effects on the consumer resulting from this situation necessitates legislative intervention to regulate electronic advertising, taking into account its unique characteristics. Such intervention is required to suppress the abuses and practices aimed at misleading and deceiving the consumer, manipulating their will, and influencing their choices.

Keywords*:Consumer, Electronic, Advertising, Misleading, Protection.*

ملخص:
مع تطور قنوات التجارة وتنوعها بفعل التطور التكنولوجي أدى ذلك إلى سهولة استعمال الإعلانات والإشهارات لمختلف المنتجات والخدمات الموجهة للمستهلك، وإن كانت تلك الإعلانات الإلكترونية تلعب دورا مؤثرا في ترويج السلع والخدمات، وإطلاع المستهلك على نحافة المعلومات المتعلقة بالسلع المعلن عنها، غير أن هذه الإعلانات أصبح يلجأ إليها بعض الموردين والأعوان الاقتصاديين لتحقيق أهداف غير مشروعة وذلك من خلال تضليل المستهلك بمعلومات خادعة وغير صحيحة عن السلع والخدمات المعروضة خاصة بعد أن أضحت وسائل الاتصال في متناول الجميع مع الغياب التام لأي تشريع خاص ينظم هذه الإعلانات بشكل دقيق وسليم مما جعل المستهلك يجد نفسه حائرا بين تصديق ما تروج له الإعلانات التجارية الإلكترونية، والحدود التي تقف عنها

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بين المعقول والمبالغ فيه، وما قد ينجم عن ذلك من آثار سلبية على المستهلك، الأمر الذي يستدعي تدخل المشرع لتنظيم الإشهار الإلكتروني ومراعاة خصوصيته وقمع التجاوزات والممارسات التي غرضها تضليل وخداع المستهلك وتوجيه إرادته والتأثير على خياراته

كلمات مفتاحية:مستهلك، إلكتروني، إشهار، مضلل، حماية.

I. Introduction

As a result of technological advancements in all aspects of life, the sale of products and services is now conducted through various electronic means, with the internet being the most prominent and significant. This has been accompanied by the conclusion of various consumer contracts through non-traditional methods appropriate for these medium, namely electronic contracts. Among the methods used by merchants and other economic agents to promote their goods and offer their services is electronic advertising, which they disseminate through their websites and pages. Since this occurs in a virtual domain where the consumer is not physically in front of the desired product or service, these merchants and economic agents have resorted to various methods designed to deceive the consumer and unduly influence their consent. These methods are often clever and fraudulent, especially in the absence of regulatory bodies working to protect the consumer's consent and choice.

The evolution of advertising techniques, specifically concerning the use of electronic commercial advertisements, has become critically important in contemporary commercial life. These advertisements now play an informative role intended to attract the consumer's attention to the best goods and services, allowing them to choose what they need without incurring significant effort or expense. Furthermore, they have become an effective tool for producers or economic agents to distribute goods and services beyond any specific geographical scope, ensuring their products and services are marketed swiftly and at a lower cost. Consequently, an urgent need has arisen to protect the consumer from the risks inherent in e-commerce contracts in general. This is particularly true given that most consumers lack the experience and ability to distinguish goods and services in terms of quality, utility, or the standard at which they are provided. This becomes especially evident when they are supplied with deceptive and misleading information about them.

Therefore, the matter necessitates the establishment of controls and restrictions on electronic commercial advertisements. The Algerian legislator intervened by issuing several legal texts aimed collectively at protecting the consumer from misleading advertising, the most recent of which is Law No. 18-05 on e-commerce. This raises the question of the effectiveness of current legal texts in providing consumer protection from misleading electronic advertisements.

To address this problematic, we have deemed it appropriate to examine the topic in two sections: in the first section, we will address the conceptual framework of misleading electronic advertising, while the second section will be dedicated to the manifestations of protection from misleading electronic advertising.

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II. The Conceptual Framework of Misleading Electronic Advertising

In this section, we will address the concept of electronic advertising and define the concept of "misleading" within electronic advertising.

II.1 The Concept of Electronic Advertising

While numerous definitions of electronic advertising exist, there is a consensus on its constituent elements.

II.1.1 Definition of Electronic Advertising

Commercial advertising is generally defined as: "A means of introducing products and stimulating contracting; it encompasses everything a merchant uses to motivate a consumer to purchase their goods, whether through visual, auditory, or written means. (Zouba, 2017) " Alternatively, it is: "Any means aimed at psychologically influencing the recipient to achieve commercial objectives." As for Algerian legislation, the Algerian legislator stipulated in Article 03 of Law No. 04-02, which specifies the rules applicable to commercial practices (Dakdak, 2017)., that it is: "...any advertisement that aims, directly or indirectly, to promote the sale of goods or services, regardless of the location or the communication means used." (Law No. 04-02, 2004).

Furthermore, the E-commerce Law No. 18-05 stipulates in Article 6, paragraph 6, that it is: "...any advertisement that aims, directly or indirectly, to promote the sale of goods or services through electronic communications"(Law No. 18-05, 2018).

II.1.2 Elements of Electronic Advertising

Advertising is fundamentally based on two elements: a material element and a moral (or intangible) element. The material element in electronic advertising consists of the means used, which are electronic media such as the internet and other electronic communication methods. The moral element is the intent and purpose of the advertisement, which is promotion for the purpose of contracting and, consequently, achieving profit. This element is embodied in the competitive factor that influences the receiving public (Safih &Benjedid, 2021, p. 791). Several techniques are used, such as repetition, which allows the subject of the advertisement to be fixed in the recipient's mind, making them more receptive to the goods and services offered. It is also worth noting that the trademark is considered one of the material elements of commercial advertising, as it helps the advertiser to highlight their products. The use of a trademark in advertising leads to its establishment in the public's mind. (Safih &Benjedid, 2021, p. 791)

II.1.3 Characteristics of Electronic Advertising

Electronic advertising is distinguished by a set of characteristics, some of which it shares with other forms of advertising, while others are unique to it. These are as follows:

Electronic Advertising is Directed at the Consumer Public: Electronic advertising messages are addressed to the general public of consumers, not to a specific individual (Ghannam, 2008, p. 29)

Electronic Advertising Informs Consumers of the Merits of Goods and Services: The objective of merchants and economic agents in presenting their goods and services is to attract consumers and induce them to contract. The goal of any advertisement is to create a psychological effect on the receiving public by persuading them of the merits of the goods and services and the benefits they can provide (Ibrahim, 2008, p. 72).

Electronic Advertising is Commercial in Nature: Not all advertisements disseminated via the internet are commercial. However, any advertisement through which the advertiser aims to achieve profit is considered commercial. (Safih &Benjedid, 2021, p. 791)

Commercial Electronic Advertising is Conducted via an Electronic Medium: This is what distinguishes electronic advertising from traditional advertising. Electronic advertising is carried out through electronic means, such as the internet, which is the most widely used medium, serving to attract the largest possible number of consumers in a remarkably short period of time. (Djeffal &Delloul, 2018, p. 525)

II.1.4 The Legal Nature of Electronic Advertising

Jurists have differed in determining the legal nature of commercial electronic advertising. Some have considered it an "offer" (ijab), while another school of thought has viewed it merely as an "invitation to treat" (da'wah ila al-ta'aqud), which does not specify the essential terms of the contract and lacks the intention to be immediately bound upon acceptance by another party. From this perspective, if a commercial advertisement does not contain the essential terms for contractin (Saeed, 2012, p. 135). This aligns with the nature of e-commerce contracts. However, this view has faced criticism, especially with the evolution of electronic advertising, as advertising messages now often include all the characteristics and conditions of a binding offer. (Benkhalled, 2019, p. 112) Advertising has come to be considered a significant stage in the pre-contractual process, even if it is not deemed an invitation to treat.

An offer is a proposal made by a person, known as the offeror, in which they express their firm and serious intention to conclude a specific contract. If a corresponding acceptance is joined with it, the contract is formed. It is, therefore, a definitive proposal from one person inviting another to contract according to specified terms, containing all the essential elements of the intended contract. Much of the jurisprudence has moved towards considering commercial electronic advertising as an offer, justifying their position by the fact that most advertising messages contain the characteristics of an offer, being specific and firm, so that once coupled with acceptance, a contract is formed (Benkhalled, 2019, p. 113).

The Algerian legislator has adopted this position. Article 11 of the E-commerce Law No. 18-05 enumerates all the essential and fundamental matters in an electronic commercial offer, which is evidence that it is considered an offer (Safih &Benjedid, 2021, p. 791). It states: "The electronic supplier must present the electronic commercial offer in a visible, legible, and understandable manner. It must include, at a minimum but not exclusively, the following information: '...the nature, characteristics, and prices of the proposed goods or services, inclusive of all taxes, the availability of the good or service, the methods, costs, and deadlines for delivery...'" (Law No. 18-05, Art. 11, 2018).

II.2 Defining the Concept of "Misleading" in Electronic Advertising

Given the harm that misleading electronic advertisements can cause to consumers, it has become essential to define what constitutes misleading advertising, to identify the standard used to assess this deception, and then to specify the subject matter of this deception.

II.2.1 Definition of Misleading Advertising

Misleading electronic advertising is defined as: "any advertisement that seeks to deceive the consumer, or is likely to do so, even if it is free of false statements, but is formulated in terms a manner that leads to the deception of the recipient" (Al-Zaqrad, 1995, p. 170). Others have defined it as: "an advertisement in which the advertiser, whether a merchant or a service provider, uses false words and phrases regarding the essential characteristics and features of the electronically advertised good or service, in a way that leads to deceiving the consumer and inducing them to contract or increasing their propensity to do so" (Saeed, 2012, p. 157).

It is noted that there is no significant difference in definition between electronic advertising and misleading electronic advertising; the distinction lies in the objective. If an advertiser disseminates an advertisement through various modern electronic communication means, and this advertisement contains claims that are likely to mislead the recipient and induce them to contract for material gain, it is considered misleading advertising. The concepts of falsehood and deception in commercial electronic advertising do not differ from their counterparts in traditional commercial advertising, except in the medium used. However, the impact and reach of falsehood and deception on the internet are more severe and powerful.

The Algerian legislator has not defined misleading advertising but has provided examples of it by including this type of commercial practice among the unfair commercial practices that it considers illicit and prohibited. This is found in Article 28 of Law No. 04-02, which specifies the rules applicable to commercial practices, stating: "...any misleading advertisement is considered illicit and prohibited, especially if it: contains declarations, statements, or presentations that could lead to deception regarding the definition of a product or service...". This is also reflected in Article 56 of Executive Decree No. 13-378, which defines the conditions and modalities related to consumer information, stipulating: "Any false information or advertisement that is likely to cause confusion in the consumer's mind is prohibited" (Executive Decree No. 13-378, 2013).

II.2.2 The Standard for Assessing Deception

Two primary standards are debated in legal scholarship regarding the determination of whether deception exists in an advertisement. The first is the objective standard, which examines the advertisement in an abstract manner to determine the presence or absence of deception. This standard relies on the "average person" or "reasonable person" benchmark. According to this standard, the determination of deception must focus on the advertising message itself and the falsification or deception it contains, regardless of the person to whom it is addressed.

The second is the subjective standard, whereby deception is determined based on the person of the recipient. If the recipient possesses a high degree of vigilance, prudence, and intelligence, the advertisement is considered misleading only if it would deceive such a person. Conversely, if the consumer is below the ordinary level of vigilance and intelligence, the advertisement would be deemed misleading no matter how minimal the degree of deception. However, if the consumer is of an ordinary, average level, an advertisement is not considered misleading unless the general public of consumers would be deceived by it (Abu Kaif, 2020, p. 7).

It appears that the adoption of the objective standard is the most suitable, given the balance and discipline that characterize this standard. Furthermore, some justify this by considering that commercial advertising is an act of a public nature, directed at the general populace without distinction. Consequently, the individual circumstances of a consumer with special conditions dissolve within the collective group addressed by the commercial advertisement (Abdel-Baqi, 2004, p. 162).

II.2.3 The Subject Matter of Deception

Electronic deception must have a subject matter upon which it is directed. This subject matter may pertain to the intrinsic nature of the products themselves or to their external elements. Moreover, electronic deception may not be limited to a single element of deception but may involve more than one.

A. Electronic Deception Related to the Intrinsic Nature of Products or Services

The intrinsic nature (dhatiyat) of advertised goods or services can be defined as the set of essential elements of those goods and services, without which the consumer would not have proceeded to contract. The absence of one of these elements would affect the nature of the good, which might prevent the consumer from acquiring it because it is no longer suitable for them or does not meet the considerations they had for its purchase (Abu Kaif, 2020, p. 10). However, these elements are a matter of jurisprudential debate, the basis of which relates to the nature of the elements upon which deception can occur. These are as follows:

1- Electronic Deception Regarding the Existence of Goods or Services:

Some might find it very strange to advertise a good that does not actually exist. However, reality has produced many such cases where a non-existent good is advertised with the intent of misleading the public. This form of deception is particularly clear and flagrant in the services sector. Electronic deception in advertising concerning the non-existence of goods or services takes three forms (Abu Kaif, 2020, p. 10):

The first form is the absolute non-existence of the good, meaning the advertiser advertises something they do not possess, with the intent to deceive the consumer. This is considered the most serious form of electronic deception related to the non-existence of goods or services.

The second form involves the existence of the goods or services, but with specifications that differ from what was advertised. An example would be advertising a ready-to-occupy residential apartment equipped with all necessities, when in reality, it has deficiencies in various aspects (Abdel-Baqi, 2004, p. 162).

The third form involves the existence of the goods or services, but they are not ready for delivery.

2- Electronic Deception Regarding the Essential Characteristics of Goods and Services:

Essential characteristics are defined as the set of properties that give the consumer a clear picture of the advertised goods or services and are one of the reasons that motivate them to contract. Jurisprudence has differed regarding what constitutes essential characteristics, the reason being that these characteristics are considered relative matters. This has led to the emergence of two schools of thought. The first adopts an objective standard, which defines essential characteristics by looking at the inherent properties of the goods and services. In contrast, the proponents of the second school of thought adopt a subjective standard, which holds that the determination of what constitutes an essential characteristic depends on what the parties agree upon (Al-Zaqrad, 1995, p. 175).

B. Electronic Deception External to the Intrinsic Nature of Products or Services

Deception in electronic advertisements may also pertain to one or more elements that are external to the intrinsic nature of the products or services but which have a significant influence on the consumer's choice. These elements include:

1- Deception in the Price of Goods and Services:

Misleading advertising regarding the prices of products or services occurs either by advertising a price for a product or service that does not correspond to the real price offered to the recipient, or when the commercial advertisement implies the existence of a price reduction that later turns out to be fictitious. In such cases, the advertiser often uses various phrases intended to mislead the recipient, such as: "We have the lowest prices," "You won't find a lower price, or we'll pay you the difference," "Selling at cost price," or "Sale with discounts up to 50%" (Saeed, 2012, p. 140). The Algerian legislator has combated price deception by issuing several legal texts, whether under Law No. 18-05 on e-commerce, Law No. 04-02 specifying the rules applicable to commercial practices, or Order No. 03-03 on competition, among others.

2- Deception Related to the Expected Results of Use:

Advertising deception can also pertain to the benefits that can be realized from the advertised product or service. This element is considered the primary objective behind contracting. In reality, it can be difficult to define these results based on an objective standard, especially as they are linked to other elements such as the nature of the item and its essential characteristics (Ghannam, 2008, p. 34). Sometimes, results are presented that differ from those included in the advertisement. For instance, it is considered false advertising to claim that a medicine composed only of natural elements has astonishing effects against acute pain, or to advertise a product as "100% effective against baldness" (Lakhal & Chenia, 2023).

3- Deception in the Terms of the Contract:

This occurs when a merchant or service provider advertises favourable sales conditions, such as the possibility of exchanging or returning the purchased item if the customer is not satisfied, guaranteeing free delivery service, or offering visits to certain places, when these promises are false and contrary to the truth. If it is later proven that these conditions or undertakings were not genuine, this constitutes a fraud against the consumer (Ibrahim, 2008, p. 75).

III. Manifestations of Protection from Misleading Electronic Advertising

Having previously defined misleading advertising, it is now necessary to identify the means or methods capable of protecting the electronic consumer from illicit advertisements. These means may be judicial, through the consumer's recourse to the courts based on legal provisions. They may also be administrative, preventive, and regulatory means, through the monitoring and control of advertisements before or after their publication. This is what we will examine in the following sections.

III.1 Liability for Misleading Electronic Advertising

To ensure that electronic advertising is fair and not misleading, the Algerian legislator has stipulated a set of conditions and obligations incumbent upon the advertiser, which are intended to protect the consumer and guarantee their freedom of choice and the integrity of their consent. Conversely, the Algerian legislator has deemed any advertising in which the electronic supplier violates these obligations to be unsolicited and illicit advertising. This is punishable under Article 40 of Law No. 18-05 on e-commerce, as well as Article 38 of the amended and supplemented Law No. 04-02, which specifies the rules applicable to commercial practices. Criminal protection is not the only means to prevent false and misleading advertising; there is also civil protection for the consumer. If false or misleading advertising leads to the conclusion of a contract between the aggrieved consumer and the advertiser, the advertiser's civil liability is established in accordance with general rules. This is what we will examine next.

III.1.1 Civil Liability for Misleading Advertising

A. Civil Protection of the Consumer from Misleading Electronic Advertising

The objective of civil protection is to safeguard the consumer's consent and ensure the formation of an informed will. This protection is realized through various legal mechanisms, beginning with the obligations imposed upon the advertiser.

1- The Obligations Imposed on the Advertiser in Electronic Advertising:

To ensure that electronic advertising is fair and not misleading, the Algerian legislator has mandated a set of conditions and obligations incumbent upon the advertiser:

- **The Provision of Advertisements that Offer Truthful and Sufficient Information about Goods and Services:**

It is imperative that an advertisement be truthful and not contain any form of deception or fraud against the consumer. It must provide sufficient information about the advertised goods or services so that the consumer's will is clarified in making their decision to purchase the good, receive the service, or otherwise proceed. (Zouba, 2017, p. 30)

- **The Clarity of Electronic Advertising:**

This principle is stipulated in Article 11 of Law No. 18-05 on E-commerce, which states: "The electronic supplier must present the electronic commercial offer in a visible, legible, and understandable manner..." The clarity of an advertisement means that the electronic promotion must be unambiguous and not obscure. The advertisement must contain sufficient data about the good or service, of a nature that fosters conscious and discerning thought and the formation of an informed will on the part of the consumer.(Benkhalled, 2019, p. 116)

- **The Prohibition of Misleading Advertising:**

In Article 30, paragraph 6, of Law No. 18-05 on E-commerce, the Algerian legislator prohibits misleading and ambiguous electronic advertising. However, the law does not define what is meant by "misleading advertising." As previously indicated, it is understood to be an advertisement that, while not containing overtly false statements, is formulated in terms that lead to the deception of the recipient. Misleading advertising thus occupies a gray area between a truthful advertisement and a false one. (Si-Youcef &Kedjar, 2021)

- **The Control of Comparative Advertising:**

Comparative advertising highlights a trademark by presenting a comparison between the specifications and characteristics of the subject brand and those of a competing brand. Comparative advertising is considered misleading and illicit if it leads to consumer confusion, as its objective is to mislead the consumer to induce them to contract based on erroneous information or conditions (Dakdak, 2017, p. 139). If the misleading advertisement targets the value of competing commercial goods or services, it is considered comparative advertising aimed at disparaging competing products and services and causing consumer confusion. The Algerian legislator has not explicitly regulated this, but foreign legal systems have. Some have permitted it, considering it beneficial to the consumer, such as American, Swiss, and Dutch law. Others have permitted it subject to certain conditions, such as French law.(Lakhal & Chenia, 2023, p. 60)

2. Civil Liability for Misleading Electronic Advertising

Falsehood and deception in both electronic and non-electronic commercial advertising are among the fraudulent means that cause harm to the consumer during the pre-contractual period. In Article 40 of Law No. 18-05 on E-commerce, the Algerian legislator affirmed the right of victims to obtain compensation. However, the law did not regulate this right in a manner consistent with the nature and type of this advertising, which compels us to rely on the general provisions of the Civil Code. A consumer who has been harmed by misleading advertising can bring an action based on either contractual or tortious liability.

A. Contractual Liability of the Advertiser:

Providing protection to the consumer from misleading electronic advertising in the event a contract is concluded is of the utmost importance, especially since the consumer represents the weaker party in the contractual relationship. Foremost among the remedies a consumer can resort to upon the conclusion of a contract are an action for annulment of the contract on the grounds of fraudulent misrepresentation (tadlis) and an action for specific performance.

A.1 Action for Annulment of the Contract for Fraudulent Misrepresentation (Tadlis):

Fraudulent misrepresentation (tadlis) is the act of deluding a person with something contrary to the truth with the intent of inducing them to contract.(Abdel-Baqi, 2004, p. 166) .It is a defect of consent that grants the deceived party the right to annul the contract, on the basis that they would not have entered into the contract had they been aware of the deception—that is, the fraudulent means employed. This is stipulated in Article 86 of the amended and supplemented (Order No. 75-58, 1975) Order No. 75-58, enacting the Algerian Civil Code. The annulment of the contract is one of the most significant legal means through which the consumer can be protected from the danger of misleading electronic advertising. When the consumer's will has been vitiated as a result of the methods of deception and misrepresentation used by the advertiser, they may seek the annulment of the contract.

For fraudulent misrepresentation to be an effective means of consumer protection and to grant the right to annul the contract, it must comprise two essential elements: a material element and a moral (or intentional) element. The material element consists of the advertiser's use of fraudulent methods capable of influencing the consumer's will and inducing them to contract. The moral element consists of the presence of an intention to mislead on the part of the advertiser to achieve an illicit purpose. Of course, it may be difficult for the consumer to prove the gravity of the schemes used by the advertiser and to establish that they were the decisive factor that induced them to conclude the contract.(Ghannam, 2008, p. 37)

A.2 Action for Specific Performance (Da'wa al-Tanfidh al-'Ayni)

Through an action for specific performance, the consumer can compel the advertiser to execute the obligation contained in their electronic advertisement in specie (in its specific form), whenever circumstances permit. However, if it becomes burdensome or impossible for the advertiser to perform their obligation in kind, the consumer may then demand compensation (Order No. 75-58, 1975). This would be the case, for example, if the subject of the advertisement is a good that is unavailable in the market; consequently, the consumer has no alternative but to claim compensation. The action for specific performance provides necessary protection for the consumer from misleading advertising by closing the door to falsehood and deception for the advertiser, who is made aware that what is stated in their electronic advertisement constitutes a binding obligation that must be fulfilled.(Si-Youcef &Kedjar, 2021, p. 83)

Nevertheless, an action for specific performance may present certain practical difficulties, particularly in correctly identifying the advertiser to demand performance from them. Although the Algerian legislator has stipulated requirements such as registration in the commercial register for those wishing to practice e-commerce in Algeria and publish a website hosted in the country with a ".com.dz" extension, among other conditions, an advertiser may not provide accurate data. They may not even be the actual supplier but rather an agent acting on behalf of a third party. This is especially problematic in the absence of regulatory bodies capable of verifying the advertiser's identity. Furthermore, a significant number of suppliers engage in e-commerce without adhering to these stipulations, which makes it exceedingly difficult to ascertain their true identity.(Safih &Benjedid, 2021, p. 796)

B. Tortious (Delictual) Liability of the Advertiser

Misleading commercial advertisements are considered an illicit act on the part of the advertiser, constituting a tortious fault (khata' taqsiri) that gives rise to their liability for the harm it causes to the consumer. According to the general rules of civil law, the establishment of tortious liability requires the presence of its constituent elements: a fault committed by the advertiser, which consists of their misleading advertisement for the products or services they seek to promote illicitly; the occurrence of harm to the consumer as a result of this fault; and a causal link between the advertiser's fault and the harm that occurred to the consumer (Ibrahim, 2008, p. 78).

Tortious liability is established in the absence of any contractual relationship between the liable party and the injured party. The fault, in this case, consists of the advertiser's breach of a legal obligation, which is always an obligation of means (to exercise due care), not an obligation of result (Al-Zaqrad, 1995, p. 178).. However, a notable criticism of the rules of tortious liability is that the burden of proof falls upon the consumer, in accordance with the general legal principle that the burden of proof lies with the claimant. This presents a significant difficulty for the consumer, especially in the absence of a contract linking them to the advertiser (Abu Kaif, 2020, p. 26).

The consumer must prove the fulfillment of all the elements of tortious liability: the harm they suffered from the misleading commercial advertisement, the fault of the advertiser, and the existence of a causal link between the harm that befell the consumer and the fault committed by the advertiser. The injured party must prove all these matters as they are material facts. Conversely, the advertiser can negate their tortious fault by arguing that the obligation imposed upon them by law is merely an obligation of means. Furthermore, this type of action is brought before general civil courts, which are not ideally suited to hear such cases. These matters require a specialized judiciary and judges with specific knowledge and training in the fields of consumer protection, commercial advertising, and commercial practices in general (Ibrahim, 2008, p. 78).

C. Criminal Protection for the Consumer from Misleading Electronic Advertising

As previously indicated, the Algerian legislator has established a set of controls and provisions for electronic advertising messages and has obligated the electronic supplier to adhere to them, pursuant to Articles 30, 31, 32, and 34 of Law No. 18-05 on E-commerce. When the electronic supplier violates the provisions on advertising and breaches the obligations incumbent upon them, the electronic advertisement is deemed illicit and misleading, and their criminal liability is engaged.(Djeffal &Delloul, 2018, p. 529)

The Algerian legislator has prescribed principal and complementary penalties for the electronic supplier upon the commission of the crime of misleading electronic advertising. Furthermore, the E-commerce Law provides for the amicable settlement of disputes through a composition fine (gharamat al-sulh).

C.1 Principal Penalties

Article 40 of Law No. 18-05 on e-commerce states: "Without prejudice to the rights of victims to compensation, a fine of 50,000 DZD to 500,000 DZD shall be imposed on anyone who violates the provisions of Articles 30, 31, 32, and 34 of this law." Similarly, Article 38 of Law No. 04-02, which specifies the rules applicable to commercial practices, imposes a financial penalty ranging from 50,000 DZD to 5,000,000 DZD. What is noticeable from these two articles is the discrepancy in the amount of the financial penalty as a sanction for breaching the integrity and truthfulness of commercial advertising. The amount of the fine prescribed in the E-commerce Law No. 18-05 is very modest compared to that in the Commercial Practices Law No. 04-02. (Safih &Benjedid, 2021, p. 799)

C.2 Complementary Penalties

Article 43, paragraph 1, of Law No. 18-05 on E-commerce stipulates: "Without prejudice to the legislative and regulatory provisions in force, when an electronic supplier, in the course of their activity, commits violations that are subject to the penalty of closure of the premises within the meaning of the legislation relating to the practice of commercial activities, the registration of domain names in Algeria shall be suspended by a decision of the Ministry of Commerce."

Based on this article, if an electronic supplier violates the provisions on electronic advertising, and the prescribed penalty for this violation under the Commercial Practices Law No. 04-02 is the closure of the commercial premises, then the parallel sanction under Law No. 18-05 on E-commerce is the precautionary suspension of the electronic supplier's domain name registration (Article 6, paragraph 8, of Law No. 18-05 (2018).. This suspension is carried out by the authority that grants domain names in Algeria, based on a decision issued by the Ministry of Commerce, for a period that cannot exceed thirty days. Law No. 18-05, Art. 43(2), 2018

C.3 The Composition Fine (Gharamat al-Sulh)

Article 45 of Law No. 18-05 on e-commerce provides: "Without prejudice to the rights of victims to compensation, the consumer protection administration is authorized to carry out composition fine procedures with persons prosecuted for violating the provisions of this law. The agents stipulated in Article 36 of this law must propose a composition fine to the offenders." Article 46, paragraph 01, of the same law states: "The amount of the composition fine is the minimum amount of the fine provided for in the provisions of this law." Consequently, for the crime of misleading electronic advertising, the composition fine is set at the minimum amount of the prescribed fine for this offense, which is 50,000 DZD. An electronic supplier who accepts the composition fine may benefit from a reduction of 10% of the fine amount. It is noted that the amount of the composition fine is exceedingly modest and is not likely to deter or repress such practices (Lakhal & Chenia, 2023, p. 68).

III.2 Novel Methods for Protecting the Consumer from Misleading Advertising

As we have previously seen, the civil liability action, in both its forms, which the aggrieved consumer brings against the advertiser responsible for misleading advertising, faces several obstacles and impediments and may not lead to a conclusive result. Furthermore, the criminal penalties established by the Algerian legislator to deter misleading advertising may seem minimal and insufficient to prevent such practices, especially when there are many victims. Therefore, there is a need for other, more effective means aimed at preventing the occurrence of these misleading advertisements from the outset or addressing them in a manner appropriate to the nature and purpose of the advertisement. The French legislator has addressed these in the French Consumer Code, Law No. 2020-105 (Abu Kaif, 2020, p. 28), which are preventive in nature and consist of prior examination of the commercial advertisement and control through the prevention of future harm from the advertisement. This is what we will address below.

III.2.1 Prior Examination Before the Dissemination of an Electronic Advertisement

The purpose of this examination is to obtain evidence confirming the veracity of the commercial advertisement. Proving the truthfulness and integrity of the content of an advertisement before its dissemination is one of the most effective and successful means of regulating advertisements. This method requires the advertiser to submit documents that confirm the accuracy and objectivity of the claims made in the intended advertisement and the conformity of the advertising material with reality. The judgment on the truthfulness and objectivity of the advertisement's content should fall within the discretionary power of the competent administrative body (Ahmed, 2016, p. 132).

Article L132-6 of the French Consumer Code, as amended in 2020, provides for this method through the court's role. It stipulates that: "The court may require the advertiser to provide all documents relevant to a commercial advertisement. In the event of the advertiser's refusal to comply with the court's order, the latter may order the seizure of these documents or take appropriate measures in that regard. The court may also impose a penalty payment (astreinte) of up to 4,500 euros for each day of delay, starting from the date set for the submission of the documents" (Abu Kaif, 2020, p. 29).

This method benefits the consumer by relieving them of the burden of proving actual harm and the causal link in cases where it is difficult for aggrieved consumers to establish such proof. It thus shifts the burden of proof to the advertiser if they wish to negate any fault on their part (Abu Kaif, 2020, p. 29). Furthermore, it facilitates the task of the judiciary by merely requiring proof that the advertiser failed to provide the documents supporting their claims in the advertisement to presume the existence of deception in the advertising material. However, it can be said that this process is technical and depends on the type of advertising material. A printed advertisement differs from one presented visually, and the connotations of the images and the written or spoken phrases it contains, as well as their suitability for public presentation, may require technicians and specialists (Benkhalled, 2019, p. 119).

III.2.2 Control Through the Prevention of Future Harm from Advertising

The activation of this method requires judicial intervention. The most prominent forms of this intervention include:

1. **Issuing Cessation Orders**

This is done to prevent a future violation originating from the entity that issued the advertisement. This is stipulated in Article L132-8 of the French Consumer Code, which allows for an order to cease misleading commercial practices to be issued by the judge or the court, or upon the request of the public prosecutor acting ex officio. In this case, the order is enforceable unless a judgment of acquittal is issued (Abu Kaif, 2020, p. 30).

2. Issuing Orders Requiring Clarifying Statements

This is a type of measure that should ideally precede the issuance of an advertisement, but can also follow its publication to the consumer public. This applies when an advertisement is not deceptive or false but lacks an essential piece of information. In such a case, the judge issues an order compelling the advertiser to disseminate this missing information in future advertisements (Ahmed, 2016, p. 134).

3. Issuing an Order to Rectify the Advertisement

This order addresses any lingering false impressions in the minds of consumers. The advertiser is required to issue a notice and correct the false information that has been left in the consumers' minds. Rectification orders must be clearly specified, indicating the place and subject of the correction, leaving no discretion to the advertiser. The judge also specifies the period during which the rectification is required, as affirmed by the text of Article L132-4 of the French Consumer Code, which states: "The court may order the convicted advertiser to publish a corrective advertisement at their own expense. It shall specify the conditions of the advertisement and its correct information within a specified period" (Al-Zaqrad, 1995, p. 199).

Publishing a corrective advertisement makes the advertiser more cautious and precise in the information they disseminate to the consumer public, as they know in advance that any deviation from objectivity and truthfulness in their advertising will be met with a counter-measure: being compelled to publish a corrective advertisement for their initial one (Al-Zaqrad, 1995, p. 199).

4. Imposing a Penalty Payment on the Advertiser

This is confirmed by Article L242-4 of the amended French Consumer Code, which stipulates: "A certain amount of fine may be imposed on the trader as a result of their breach of the obligation not to mislead. This amount can be increased to be proportionate to the benefits they derive from it. This is in addition to imposing an annual increase of 10% calculated on the basis of their sales over the last three years, and 50% of the expenses incurred to produce the advertisement or the practices that constitute the offense" (Ahmed, 2016, p. 135).

In reality, determining the percentage of the fine and its increase based on the benefits accruing to the advertiser from the misleading advertisement makes it an effective penalty. This is especially significant because fines are often of minimal importance compared to the profits the advertiser reaps from misleading advertising, and their cost is often passed on to the consumer by adding it to the price of the good (Abu Kaif, 2020, p. 32).

Conclusion

Commercial electronic advertising is a method that merchants and service providers resort to in order to promote their products and services quickly and to the largest possible segment of consumers. Given the seriousness of the matter, as it is conducted through rapid electronic media, most notably the internet, the Algerian legislator has stipulated certain provisions and controls related to advertising in the E-commerce Law No. 18-05, in addition to Law No. 04-02, which specifies the rules applicable to commercial practices. This was an attempt to regulate the field and protect the consumer from all methods of deception and misrepresentation employed by sellers of goods and providers of services to influence the consumer's desire and choice. This is without forgetting the general provisions established in the Civil Code, to which aggrieved consumers can resort to deter such methods and practices and to claim compensation.

However, in sum, it can be said that these special and general legal texts are not entirely sufficient to provide optimal protection for the consumer from the risks of misleading electronic advertising, whose reach is wider and faster compared to traditional advertising due to the nature of the medium used for its dissemination. Through this study, we have reached a number of findings, which we summarize as follows:

Findings:

- Electronic advertising is considered one of the most important methods relied upon by economic actors to provide consumers with sufficient information about their products and services.

- Electronic advertising is a significant stage in the pre-contractual process.

- The Algerian legislator has not provided a clear and specific definition of misleading electronic advertising that considers all its particulars and is linked to all its aspects.

- Electronic advertising must include all information pertaining to the good or service.

- There is no basis for distinguishing between falsehood (kidhb) and deception (tadlil) in electronic advertising, as both are based on altering the truth and both aim to mislead the consumer and induce them to contract. Thus, falsehood and deception carry the same meaning.

- Protecting the consumer from misleading electronic advertising does not necessarily require the existence of a concluded contract between the advertiser and the consumer. To argue that the scope of protection is determined by the existence of a contract would limit protection to a small number of consumers, thereby excluding many from its scope.

Recommendations:

- Based on the foregoing, we can offer the following recommendations:

- The necessity of expediting the issuance of the implementing regulations for the E-commerce Law.

- The establishment of specialized bodies tasked with monitoring electronic advertisements.

- Recognize the inadequacy of the general rules in the Civil Code to provide protection for consumers who have been harmed by misleading electronic advertising.

- A reconsideration of the criminal penalties imposed on the electronic supplier.

- The imposition of more precise and clear controls and provisions on the providers of advertisements.

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