

Advertisement Law of the People's Republic of China

Full text

Chapter I General Provisions

Article 1 This Law is formulated in order to regulate advertising activities, promote the sound development of advertising business, protect the legitimate rights and interests of consumers, maintain the socio-economic order, and enable advertisements to play a positive role in the socialist market economy.

Article 2 Advertisers, advertising agents and advertisement publishers engaged in advertising activities within the territory of the People's Republic of China shall abide by this Law. The "advertisements" as used in this Law refer to commercial advertisements, for which a commodity producer or dealer or service provider pays, and by which the same, through certain media or forms, directly or indirectly introduces his commodities to be sold or services to be provided.

The "advertisers" as used in this Law refer to the legal persons, other economic organizations or individuals that, for the purpose of promoting the sale of commodities or providing services, design, produce and publish advertisements either by itself or by commissioning others to do so.

The "advertising agents" as used in this Law refer to the legal persons, other economic organizations or individuals that on a commission basis provide advertisement designing and production services and agent service.

The "advertisement publishers" as used in this Law refer to the legal persons or other economic organizations that publish advertisements for advertisers or advertising agents commissioned by advertisers.

Article 3 An advertisement shall be true to facts, lawful, and in compliance with the requirements for the socialist cultural and ideological development.

Article 4 An advertisement shall not contain any false information, and shall not cheat or mislead consumers.

Article 5 Advertisers, advertising agents and advertisement publishers shall, when engaged in advertising activities, abide by laws and administrative rules and regulations, adhere to the principles of fairness, honesty and credibility.

Article 6 The administrative departments for industry and commerce of the people's governments at or above the county level shall be the supervisory and administrative organs for advertisements.

Chapter II Norms for Advertisements

Article 7 The contents of an advertisement shall be conducive to the physical and mental health of the

people, shall promote the quality of commodities and services, protect the legitimate rights and interests of consumers, be in compliance with social morality and professional ethics, and safeguard the dignity and interests of the State.

An advertisement shall not involve any of the following circumstances:

- (1) Using the National Flag, the National Emblem or the National Anthem of the People's Republic of China;
- (2) Using the names of State organs or their functionaries;
- (3) Using words such as the State-level, the highest-grade or the best;
- (4) Hindering social stability or endangering the safety of the person or property, or harming the public interests;
- (5) Hindering the public order or violating the sound social morals;
- (6) Having information suggesting pornography, superstition, terror, violence or hideousness;
- (7) Carrying information of ethnic, racial, religious or sexual discrimination;
- (8) Hindering the protection of environment or natural resources; or
- (9) Other circumstances prohibited by laws or administrative rules and regulations.

Article 8 Advertisements shall not impair the physical and mental health of minors or disabled persons.

Article 9 Where there are statements in an advertisement on the performance, place of origin, usage, quality, price, producer or manufacturer, term of validity and promise of a commodity, or on the items, forms, quality, price and promise of a service, they shall be clear and explicit. Where there are statements in an advertisement about additional presentation of gifts for the purpose of promoting the sale of commodities or providing services, the types and quantities of such gifts shall be clearly indicated.

Article 10 Data, statistical information, results of investigation or survey, digest and quotations used in an advertisement shall be true to facts and accurate, and their sources shall be indicated.

Article 11 Where an advertisement involves a patented product or patented process, it shall clearly indicate the number of patent and the type of patent. Where a patent right has not been obtained, an advertiser shall not give false information in an advertisement that the patent right has been obtained. It is prohibited to use a patent application for which the patent right has not been granted or to use a terminated, nullified or invalid patent in an advertisement.

Article 12 An advertisement shall not belittle commodities of other producers and dealers or services of other providers.

Article 13 An advertisement shall be distinguishable and shall enable consumers to identify it as such. The mass media shall not publish advertisements in the form of news report. Advertisements published through the mass media shall bear advertisement marks so as to differentiate them from other non-advertisement information, and may not mislead consumers.

Article 14 An advertisement for pharmaceuticals, medical apparatus and instruments shall not have the following:

- (1) unscientific affirmations or guarantees for efficacy;
- (2) indication of cure rate or efficacious rate;
- (3) comparison of efficacy and safeness with those of other pharmaceuticals, medical apparatus and instruments;
- (4) use of the name or image of a medical research institution, academic organization, medical institution or of an expert, a doctor or patient as proof; or
- (5) other information prohibited by laws or administrative rules and regulations.

Article 15 An advertisement for pharmaceuticals must be based on the directions approved by the administrative department of public health under the State Council or the administrative departments of public health of provinces, autonomous regions or municipalities directly under the Central Government. An advertisement for therapeutic pharmaceuticals to be used on doctor's advice as prescribed by the State must be marked with "purchase and use on doctor's prescription".

Article 16 Special pharmaceuticals such as narcotics, psychotropic substances, toxic drugs and radioactive drugs shall not be advertised.

Article 17 An advertisement for agricultural pesticides shall not have the following:

- (1) absolute affirmations indicating their safeness such as being non-toxic or non-harmful;
- (2) unscientific affirmations or guarantees for their efficacy;
- (3) written or spoken language or pictures that violate rules on safe use of agricultural pesticides; or
- (4) other information prohibited by laws or administrative rules and regulations.

Article 18 It is prohibited to publish advertisements for tobacco through broadcasting, motion pictures, TV programmes, newspapers or periodicals. It is prohibited to put up advertisements for tobacco at any kind of waiting rooms, cinemas, theatres, conference halls, stadiums and gymnasiums or other similar public places. Advertisements for tobacco must be marked with "Smoking is harmful to your health".

Article 19 An advertisement for foods, alcoholic drinks or cosmetics must meet requirements for public health, and shall not employ medical jargons or terms liable to confuse them with pharmaceuticals.

Chapter III Advertising Activities

Article 20 Advertisers, advertising agents and advertisement publishers shall, in their advertising activities, conclude written contracts according to law defining rights and obligations of respective parties.

Article 21 Advertisers, advertising agents and advertisement publishers may not engage in unfair competition of any form in their advertising activities.

Article 22 In an advertisement designed, produced and published by the advertiser itself or by others on a commission basis, the sale of commodities being promoted or the services provided shall conform to the business scope of the advertiser.

Article 23 An advertiser shall, in designing, producing and publishing advertisements on a commission

basis, commission advertising agents or advertisement publishers with lawful qualifications for such business.

Article 24 An advertiser shall, in designing, producing and publishing advertisements by itself or by others on a commission basis, possess or provide the following true, lawful and valid supporting documents:

- (1) business license and other documents for the qualifications of production and operation;
- (2) documents issued by a quality inspection institution for matters relating to the quality of commodities being advertised; and
- (3) other documents confirming the truthfulness of the contents of the advertisement.

Where the publication of an advertisement is subject to the examination by the competent administrative departments as provided by Article 34 of this Law, relevant documents of approval shall also be provided.

Article 25 If an advertiser or advertising agent is to use the names or images of others in advertisements, it shall obtain in advance a written consent from them; and in the case of persons with no capacity for civil conduct or with limited capacity for civil conduct, it shall obtain in advance a written consent from their guardians.

Article 26 Anyone who is to engage in the advertising business shall have the necessary professional and technical personnel and production equipment and undergo the registration procedures for a company or advertising business in accordance with the law, before he may engage in advertising activities. The advertising business of radio stations, television stations, publishers of newspapers and periodicals shall be conducted by their departments specialized in advertising business, and registration for concurrent advertising business shall be made according to law.

Article 27 An advertising agent or an advertisement publisher shall check relevant supporting documents, verify the contents of advertisements in accordance with laws and administrative rules and regulations. For an advertisement with untrue information or incomplete documents, the advertising agent may not provide designing, production and agent service, and the advertisement publisher may not publish such an advertisement.

Article 28 An advertising agent or an advertisement publisher shall in accordance with relevant provisions of the State establish and perfect a system of acceptance registration, examination and verification, and record management for advertising business.

Article 29 Advertising charges shall be reasonable and open to the public, the rates of charges and measures for the collection thereof shall be reported to the price control authorities and the administrative departments for industry and commerce for the record.

An advertising agent or an advertisement publisher shall make public its rates of charges and measures for the collection thereof.

Article 30 An advertisement publisher shall provide true information on such data as media coverage, audience rate and circulation to advertisers and advertising agents.

Article 31 No advertisement shall be designed, produced and published for commodities or services prohibited from being produced and sold or provided, and for commodities or services prohibited from being advertised, by laws or administrative rules and regulations.

Article 32 No outdoor advertisements shall be put up under any of the following circumstances:

- (1) Using traffic safety facilities or traffic signs or marks;
- (2) Impairing the use of municipal public utilities, traffic safety facilities or traffic signs or marks;
- (3) Hindering production or people's life, damaging the appearance or environment of cities;
- (4) Within the construction control areas of State organs, institutions of cultural relics protection or places of historical interest or scenic spots; or
- (5) Within areas where installation of outdoor advertisements is prohibited by the local people's governments at or above the county level.

Article 33 The local people's governments at or above the county level shall organize relevant departments such as departments of advertising supervision and control, urban construction, environmental protection and public security to work out plans for the installation of outdoor advertisements and measures for their control.

Chapter IV Examination of Advertisements

Article 34 With respect to advertisements for commodities such as pharmaceuticals, medical apparatus and instruments, agricultural pesticides or veterinary drugs to be published through broadcasting, motion pictures, TV programmes, newspapers, periodicals or other media, and other advertisements subject to examination as provided by laws or administrative rules and regulations, the competent administrative departments (hereinafter referred to as the advertisement examination organ) shall, prior to their publication, examine the contents of such advertisement in accordance with the relevant provisions of the laws or administrative rules and regulations; in the absence of such examination, such advertisements shall not be published.

Article 35 If an advertiser applies for the examination of its advertisement, the advertiser shall submit relevant supporting documents to the advertisement examination organ according to the laws or administrative rules and regulations. The advertisement examination organ shall, in accordance with the laws or administrative rules and regulations, make a decision on the examination.

Article 36 No unit or individual may counterfeit, alter or transfer the document of a decision on the examination of an advertisement.

Chapter V Legal Responsibility

Article 37 Where, in violation of the provisions of this Law, false propaganda for commodities or services has been conducted by making use of advertisements, the organ in charge of advertising supervision and control shall order the advertiser to stop publishing the advertisements and to use the same amount of its advertising expenses for making corrections in public within the corresponding areas, thus eliminating the effects, and shall impose on the advertiser a fine of not less than the amount of its advertising expenses

but not more than five times that amount; the advertising agent and advertisement publisher who are held responsible shall be confiscated of their advertising charges and shall also be imposed thereupon a fine of not less than the amount of the advertising charges and not more than five times that amount; if the circumstances are serious, the advertising business of such offenders shall be stopped according to law. If the case constitutes a crime, the offenders shall be investigated for criminal responsibility according to law.

Article 38 Where, in violation of the provisions of this Law, false advertisements have been published to cheat and mislead consumers, thus infringing upon the lawful rights and interests of consumers who have bought the commodity or accepted the service, the advertiser shall bear civil liabilities according to law; if an advertising agent or advertisement publisher, who knows clearly or ought to know that the advertisement is false, still designs, produces and publishes the advertisement, it shall bear joint and several liability according to law. Where an advertising agent or advertisement publisher fails to provide the real name and address of the advertiser, it shall bear complete civil liability. Where social organizations or other organizations have recommended commodities or services to consumers in false advertisements, thus infringing upon the lawful rights and interests of consumers, they shall bear joint and several liability according to law.

Article 39 Where an advertisement is published in violation of the provisions of paragraph 2 of Article 7 in this Law, the organ in charge of advertising supervision and control shall order the advertiser, advertising agent and advertisement publisher who are held responsible to stop publishing the advertisement and to make corrections in public, shall confiscate their advertising charges, and shall also impose a fine thereon of not less than the amount of the advertising charges but not more than five times that amount; if the circumstances are serious, their advertising business shall be stopped according to law. If the case constitutes a crime, the offenders shall be investigated for criminal responsibility according to law.

Article 40 Where an advertisement is published in violation of the provisions of Article 9 to Article 12 of this Law, the organ in charge of advertising supervision and control shall order the advertiser, advertising agent and advertisement publisher who are held responsible to stop publishing the advertisement and to make corrections in public, shall confiscate their advertising charges, and may also impose a fine thereon of not less than the amount of the advertising charges but not more than five times that amount. Where an advertisement is published in violation of the provisions of Article 13 of this Law, the organ in charge of advertising supervision and control shall order the advertisement publisher to make corrections and shall impose a fine thereon of not less than 1,000 yuan but not more than 10,000 yuan.

Article 41 Where, in violation of the provisions of Article 14 to Article 17 or of Article 19 of this Law, an advertisement for pharmaceuticals, medical apparatus and instruments, agricultural pesticides, foods, alcoholic drinks or cosmetics is published, or an advertisement is published in violation of the provisions of Article 31 of this Law, the organ in charge of advertising supervision and control shall order the advertiser, advertising agent and advertisement publisher who are held responsible to make corrections or to stop publishing the advertisement, shall confiscate their advertising charges, and may also impose a fine thereon of not less than the amount of the advertising charges but not more than five times that amount; and if the circumstances are serious, their advertising business shall be stopped according to law.

Article 42 Where, in violation of the provisions of Article 18 of this Law, an advertisement for tobacco is published through broadcasting, motion pictures, TV programmes, newspapers or periodicals, or an advertisement for tobacco is put up in public places, the organ in charge of advertising supervision and control shall order the advertiser, advertising agent and advertisement publisher who are held responsible to stop publishing the advertisement, shall confiscate their advertising charges, and may also impose a fine thereon of not less than the amount of the advertising charges but not more than five times that amount.

Article 43 Where, in violation of the provisions of Article 34 of this Law, an advertisement is published without the examination and approval of the advertisement examination organ, the organ in charge of advertising supervision and control shall order the advertiser, advertising agent and advertisement publisher who are held responsible to stop publishing the advertisement, shall confiscate their advertising charges, and also impose a fine thereon of not less than the amount of the advertising charges but not more than five times that amount.

Article 44 Where an advertiser provides false supporting documents, the organ in charge of advertising supervision and control shall impose a fine thereon of not less than 10,000 yuan but not more than 100,000 yuan. Where anyone counterfeits, alters or transfers a document of the decision on advertisement examination, the organ in charge of advertising supervision and control shall confiscate him of the illegal gains and also impose a fine thereon of not less than 10,000 yuan but not more than 100,000 yuan. If the case constitutes a crime, the offender shall be investigated for criminal responsibility according to law.

Article 45 Where an advertisement examination organ decides, after examination, to approve the illegal contents of an advertisement, the person in charge and other persons who are held directly responsible shall be subject to administrative sanctions imposed according to law by the unit they belong to, their superior organs or the administrative supervisory department.

Article 46 Where any functionary of an organ in charge of advertising supervision and control or of an advertisement examination organ neglects his duty, abuses his power or practises favouritism or other irregularities, he shall be subject to administrative sanctions. If the case constitutes a crime, the offender shall be investigated for criminal responsibility according to law.

Article 47 If an advertiser, advertising agent or advertisement publisher commits any of the following acts of infringement in violation of the provisions of this Law, it shall bear civil liability according to law:

- (1) Impairing the physical and mental health of a minor or a disabled person through an advertisement;
- (2) Passing off as the owner of another's patent;
- (3) Belittling commodities or services of other producers or dealers;
- (4) Using the name or image of another person in an advertisement without his permission; or
- (5) Other acts of infringement upon the lawful civil rights and interests of another person.

Article 48 Where a party refuses to accept the decision on an administrative sanction, the party may, within fifteen days from the date of receiving the notice of the decision on punishment, apply for reconsideration to the organ at the next higher level than the organ that made the decision on

punishment; the party also may, within fifteen days from the date of receiving the notice of the decision on punishment, directly file a suit with a people's court.

The reconsideration organ shall, within sixty days from the date of receiving the application for reconsideration, make a reconsideration decision. Where a party is not satisfied with the reconsideration decision, the party may, within fifteen days from the date of receiving the reconsideration decision, file a suit with a people's court. Where the reconsideration organ fails to make a reconsideration decision within the time limit for reconsideration, the party concerned may, within fifteen days from the date of the expiration of the time limit for reconsideration, file a suit with a people's court. Where a party has neither applied for reconsideration nor filed a suit with a people's court within the time limit, nor executed the decision on punishment, the organ that made the decision on punishment may apply to a people's court for compulsory execution.

Chapter VI Supplementary Provisions

Article 49 This Law shall go into effect as of February 1, 1995. If any content of other laws and regulations on advertisement formulated prior to the implementation of this Law is inconsistent with the provisions of this Law, this Law shall prevail.